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A
COMPLETE COLLECTION
OF

State Trials

AND

PROCEEDINGS FOR HIGH TREASON AND OTHER
CRIMES AND MISDEMEANORS

FROM THE
EARLIEST PERIOD TO THE YEAR 1783,
WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY

T. B. HOWELL, Esq. F.R.S. F.S.A.

AND

CONTINUED

FROM THE YEAR 1783 TO THE PRESENT TIME:

BY

THOMAS JONES HOWELL, Esq.

VOL. XXVIII.

[BEING VOL. VII. OF THE CONTINUATION]

42—44 GEORGE III.....A. D. 1802—1803.

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VOL. XXIX, being the Eighth of the Continuation, is in the press, and will contain full and correct Reports of the following Cases :—

- I. *Trial of W. Cobbett for Libel.*
- II. *Case of Plunkett v. Cobbett for Libel.*
- III. *The whole Proceedings in the Case of the Hon. Robert Johnson, one of the Judges of the Court of Common Pleas in Ireland, now first collected, viz.*
 1. *The preliminary Proceedings,*
 2. *Proceedings in the Court of King's Bench in Ireland,*
 3. *Proceedings in the Court of Exchequer in Ireland;*
 4. *Arguments on the Plea to the Jurisdiction of the Court of King's Bench in England, from Short-hand Notes never before published.*
 5. *Trial at Bar in the Court of King's Bench in England.*
- IV. *The Case of Troy v. Symonds for Libel.*
- V. *The Trial of Henry Lord Viscount Melville on an Impeachment by the House of Commons.*
- VI. *Proceedings in the Case of Brigadier General Thomas Picton, now first published from authentic Documents; &c. &c. &c.*

ERRATA.

- Page 798, line 90, *dele the comma after rebellion.*
—— lines 18 and 19 *from bottom, dele the parenthesis.*
—— line 13 *from bottom, dele the comma after himself.*
—— 791, line 12. *for their, read her.*
—— 1103, last line, *after Son, read vol. 2, p.*
—— 1172, line 24 *from bottom, dele the semicolon after France.*

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Court of King's Bench, Dublin, Monday, May 17th, 1802.

Counsel for the Plaintiff.

Mr. Curran [afterwards Master of the Rolls].

Mr. Barrington.

Mr. J. Ball.

Mr. Mac Nally.

Mr. Orr.

Mr. Wallace.

Agent.—Mr. A. Cooke.

Counsel for the Defendant.

Mr. Fletcher [afterwards a Judge of the Court of Common Pleas.]

Mr. Plunkett.

Mr. Jonas Greene.

Mr. Ridgeway.

Mr. Kemmis.

Agent.—Thomas Kemmis, Esq. Crown Solicitor.

The following is a list of the Jury :

John Lindsay,	James Blacker,
B. Maziere,	Bennett Dugdale,
Richard Litton,	John Norton,
Thomas Kennan,	Francis Hamilton,
Wm. G. Galway,	Edward Rice,
John Dickinson,	Isaac Manders.

MR. CURRAN stated the case for the plaintiff, in substance, nearly to the following effect:

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He began by telling the jury, it was the most extraordinary action he had ever met with. It must have proceeded from the most unexampled impudence in the plaintiff, if he has brought it wantonly; or the most unparalleled miscreancy in the defendant, if it shall appear supported by proof. And the event must stamp the most condign and indelible disgrace on the guilty defendant, unless an unworthy verdict should shift the scandal upon another quarter. On the record the action appeared short and simple; it was an action of trespass, *vi et armis*, for an assault, battery, and false imprisonment. But the facts that led to it, that explain its nature, and its enormity, and of course that should measure the damages, were neither short nor simple; the novelty of them might surprise, the atrocity must shock their feelings, if they had feelings to be shocked:—but he did not mean to address himself to any of their proud feelings of liberty; the season for that was past. There was indeed a time when, in addressing a jury upon very inferior violations of human rights, he had felt his bosom glow and swell with the noble and elevating consciousness of being a freeman, speaking to freemen, and in a free country; where, if he was not able to communicate the generous flame to their bosoms, he was not at least so cold as not to catch it from them. But that was a sympathy, which he was not now so foolish as to affect either to inspire or to participate. He would not insult them by the bitter mockery of such an affectation; buried

as they were, he did not wish to conjure up the shades of departed freedom to flutter round their tomb, to haunt or to reproach them. Where freedom is no more, it is a mischievous profanation to use her language; because it tends to deceive the man who is no longer free, upon the most important of all points, that is, the nature of the situation to which he is reduced; and to make him confound the licentiousness of words with the real possession of freedom. He meant not therefore, to call for a haughty verdict, that might humble the insolence of oppression, or assert the fancied rights of independence. Far from it; he only asked for such a verdict, as might make some reparation for the most extreme and unmerited suffering, and might also tend to some probable mitigation of the public and general destiny.

For this purpose, said Mr. Curran, I must carry back your attention to the melancholy period of 1798. It was at that sad crisis, that the defendant, from an obscure individual, started into notice and consequence. It is in the hot-bed of public calamity, that such portentous and inauspicious products are accelerated without being matured. From being a town-major, a name scarcely legible in the list of public incumbrances, he became at once invested with all the real powers of the most absolute authority. The life and the liberty of every man seemed to be given up to his disposal.

With this gentleman's extraordinary elevation began the story of the sufferings and ruin of the plaintiff. It seems, a man of the name of McGuire was prosecuted for some offence against the state. Mr. Hevey, the plaintiff, by accident was in court; he was then a citizen of wealth and credit, a brewer in the first line of that business. Unfortunately for him, he had theretofore employed the witness for the prosecution, and found him to be a man of infamous character. Unfortunately for himself he mentioned the circumstance in court. The counsel for the prisoner insisted on his being sworn; he was so. The jury were convinced, that no credit was due to the witness for the crown, and the prisoner was accordingly acquitted. In a day or two after, major Sirr met the plaintiff in the street, asked how he dared to interfere in *his* business, and swore, By God, he would teach him how to meddle with "his people." Gentlemen, there are two classes of prophets, one that derive their predictions from real or fancied inspiration, and who are sometimes mistaken; and another, who prophecy what they are determined to bring about themselves. Of this second, and by far the most authentic class, was the major; for heaven, you see, has no monopoly of prediction. On the following evening, poor Hevey was dogged in the dark into some lonely alley—there he was seized, he knew not by whom, nor by what authority—and became in a moment, to his family, and his friends, as if he had never

been. He was carried away in equal ignorance of his crime, and of his destiny; whether to be tortured, or hanged, or transported. His crime he soon learned; it was the treason he had committed against the majesty of major Sirr. He was immediately conducted to a new place of imprisonment in the castle-yard, called the Provost. Of this mansion of misery, of which you have since heard so much, major Sandys was, and I believe yet is, the keeper: a gentleman of whom I know how dangerous it is to speak, and of whom every prudent man will think, and talk with all due reverence. He seemed a twin-star of the defendant—equal in honour, in confidence; equal also (for who could be superior?) in probity and humanity. To this gentleman was my client consigned, and in his custody he remained about seven weeks, unthought of by the world, as if he had never existed. The oblivion of the buried is as profound as the oblivion of the dead; his family may have mourned his absence or his probable death; but why should I mention so paltry a circumstance? The fears, or the sorrows of the wretched give no interruption to the general progress of things. The sun rose and the sun set just as it did before—the business of the government, the business of the castle, of the feast, of the torture, went on with their usual exactness and tranquillity. At last Mr. Hevey was discovered among the sweepings of the prison; and was at last to be disposed of. He was at last honoured with the personal notice of major Sandys.—“Hevey,” said the major, “I have seen your ride, I think, a smart sort of a mare—you can’t use her here—you had better give me an order for her.” The plaintiff, you may well suppose, by this time had a tolerable idea of his situation; he thought he might have much to fear from a refusal, and something to hope from compliance; at all events, he saw it would be a mean of apprizing his family that he was not dead—he instantly gave the order required. The major graciously accepted it, saying, “your courtesy will not cost you much—you are to be sent down to-morrow to Kilkenny, to be tried for your life—you will most certainly be hanged—and you can scarcely think that your journey to the other world will be performed on horseback.” The humane and honourable major was equally a prophet with his compeer. The plaintiff, on the next day took leave of his prison, as he supposed for the last time, and was sent under a guard to Kilkenny, then the head quarters of sir Charles Asgill, there to be tried by court-martial for such crime as might chance to be alleged against him. In any other country the scene which took place on that occasion might excite no little horror and astonishment; but with us, these sensations have become extinguished by frequency of repetition. I am instructed, that a proclamation was sent forth, offering a reward to *any man, who would*

come forward, and give any evidence against the traitor Hevey. An unhappy wretch, who had been shortly before condemned to die, and was then lying ready for execution, was allured by the proposal. His integrity was not firm enough to hesitate long between the alternative proposed; pardon, favour, and reward, with perjury, on one side; the rope and the gibbet on the other. His loyalty decided the question against his soul. He was examined, and Hevey was appointed by the sentence of a mild, and, no doubt, enlightened court-martial, to take the place of the witness, and succeeded to the vacant halter. Hevey, you may suppose, now thought his labours at an end; but he was mistaken: his hour was not yet come. You are probably, gentlemen, or you, my lords, are accounting for his escape, by the fortunate recollection of some early circumstances that might have smote upon the sensibility of sir Charles Asgill, and made him believe, that he was in debt to Providence for the life of one innocent though convicted victim. But it was not so; his escape was purely accidental. The proceedings upon this trial happened to meet the eye of lord Cornwallis. The freaks of fortune are not always cruel: in the bitterness of her jocularly, you see she can adorn the miscrancy of the slave, in the trappings of power, and rank, and wealth; but her playfulness is not always inhuman; she will sometimes, in her gambols, fling oil upon the wounds of the sufferer; she will sometimes save the captive from the dungeon and the grave, were it not only, that she might afterwards re-consign him to his destiny, by the reprisal of capricious cruelty upon fantastic commiseration. Lord Cornwallis read the transmiss of Hevey's condemnation—his heart recoiled from the detail of stupidity and barbarity.—He dashed his pen across the odious record, and ordered that Hevey should be forthwith liberated. I cannot but highly honour him for his conduct in this instance; nor, when I recollect his peculiar situation at that disastrous period, can I much blame him for not having acted towards that court with the same vigour and indignation, which he hath since shown with respect to those abominable jurisdictions. Hevey was now a man again—he shook the dust off his feet against his prison gate: his heart beat the response to the anticipated embrace of his family and his friends, and he returned to Dublin. On his arrival here, one of the first persons he met with was his old friend, major Sandys. In the eye of poor Hevey, justice and humanity had shorn the major of his beams—he no longer regarded him with respect or terror. He demanded his mare; observing, that though he might have travelled to heaven on foot, he thought it more comfortable to perform his earthly journeys on horseback: "Ungrateful villain," said the major; "is this the gratitude you show to his majesty and to me, for our clemency to you? You

shan't get possession of the beast, which you have forfeited by your treason; nor can I suppose, that a noble animal, that had been honoured with conveying the weight of duty and allegiance, could condescend to load her loyal loins with the vile burden of a convicted traitor." As to the major, I am not surprised that he spoke and acted as he did. He was no doubt astonished at the impudence and novelty of calling the privileges of official plunder into question. Hardened by the numberless instances of that mode of unpunished acquisition, he had erected the frequency of impunity into a sort of warrant of spoil and rapine. One of these instances, I feel, I am now bringing to the memory of your lordship. A learned and respected brother barrister* had a silver cup; the major heard that for many years it had borne an inscription of "Erin go brach" which meant "Ireland for ever." The major considered this perseverance in guilt for such a length of years as a forfeiture of the delinquent vessel. My poor friend was accordingly robbed of his cup. But upon writing to the then attorney-general, that excellent officer felt the outrage, as it was his nature to feel every thing that was barbarous or base; and the major's loyal sideboard was condemned to the grief of restitution. And here let me say, in my own defence, that this is the only occasion upon which I have ever mentioned this circumstance with the least appearance of lightness. I have often told the story in a way in which it would not become me to tell it here,—I have told it in the spirit of those feelings, which were excited at seeing, that one man could be sober and humane, at a crisis, when

* "The gentleman in question was Mr. Mac Nally. The manner of the robbery is characteristic of the times: a serjeant waited upon him, and delivered a verbal command from Major Sandys to surrender the cup; Mr. Mac Nally refused, and commissioned the messenger to carry back such an answer as so daring a requisition suggested. The serjeant, a decent, humane Englishman, and who felt an honest awkwardness at being employed on such a service, complied; but respectfully remonstrated upon the imprudence of provoking major Sandys. The consequences soon appeared: the serjeant returned with a body of soldiers, who paraded before Mr. Mac Nally's door, and were under orders to proceed to extremities if the cup was not delivered up. Upon Mr. Mac Nally's acquainting lord Kilwarden with the outrage, the latter burst into tears, and exclaiming 'that his own sideboard might be the next object of plunder, if such atrocious practices were not checked,' lost not an instant in procuring a restitution of the property. The cup was accordingly sent back with the inscription erased."—*2 Life of Curran by his Son*, 147 note.

so many thousands were drunk and barbarous; and probably my statement was not stunted by the recollection, that I held that person in peculiar respect and regard. But little does it signify, whether acts of moderation and humanity are blazoned by gratitude, by flattery, or by friendship: they are recorded in the heart from which they sprung; and in the hour of adverse vicissitude, if it should ever come, sweet is the odour of their memory, and precious is the balm of their consolation.

But to return: Hevey brought an action for his mare. The major, not choosing to come into court, and thereby suggest the probable success of a thousand actions, restored the property, and paid the costs of the suit to the attorney of Mr. Hevey. It may perhaps strike you, my lord, as if I were stating what was not relevant to the action. It is materially pertinent; I am stating a system of concerted vengeance and oppression. These two men acted in concert; they were Archer and Aimwell—you master at Litchfield, and I at Coventry—you plunderer in the gaol, and I tyrant in the street—and in our respective situations we will co-operate in the common cause of robbery and vengeance. And I state this because I see major Sandys in court, and because I feel I can prove the fact, beyond the possibility of denial. If he does not dare to appear, so called upon, as I have called upon him, I prove it by his not daring to appear. If he does venture to come forward, I will prove it by his own oath, or if he ventures to deny a syllable that I have stated, I will prove by irrefragable evidence, that his denial was false and perjured.

Thus far, gentlemen, we have traced the plaintiff through the strange vicissitudes of barbarous imprisonment, of atrocious condemnation, and of accidental deliverance. [Here Mr. Curran described the feelings of the plaintiff and of his family upon his restoration; his difficulties on his return; his struggle against the aspersions on his character; his renewed industry; his gradual success; the implacable malignity of Sirr and of Sandys; and the immediate cause of the present action.] Three years had elapsed since the deliverance of my client—the public atmosphere had cleared—the private destiny of Hevey seemed to have brightened, but the malice of his enemies had not been appeased. On the 8th of last September, Mr. Hevey was sitting in a public coffee-house—major Sirr was there—Mr. Hevey was informed that the major had at that moment said, that he (Hevey) ought to have been hanged. The plaintiff was fired at the charge; he fixed his eye on Sirr, and asked, if he had dared to say so? Sirr declared that he had, and had said truly. Hevey answered, that he was a slanderous scoundrel. At the instant Sirr rushed upon him, and assisted by three or four of his satellites, who had attended him in disguise, secured him and sent him to the castle guard,

desiring that a receipt might be given for the villain.—He was sent thither. The officer of the guard chanced to be an Englishman, but lately arrived in Ireland,—he said to the bailiffs, “if this was in England, I should think this gentleman entitled to bail, but I don’t know the laws of this country—however, I think you had better loosen these irons on his wrist, or I think they may kill him.”

Major Sirr, the defendant, soon arrived, went into his office, and returned with an order which he had written, and by virtue of which Mr. Hevey was conveyed to the custody of his old friend and gaoler, major Sandys. Here he was flung into a room of about thirteen feet by twelve—it was called the hospital of the provost; it was occupied by six beds, in which were to lie fourteen or fifteen miserable wretches, some of them sinking under contagious diseases. On his first entrance, the light that was admitted by the opening of the door, disclosed to him a view of the sad fellow-sufferers, for whose loathsome society he was once more to exchange the cheerful haunts of men, the use of open air, and of his own limbs; and where he was condemned to expiate the disloyal hatred and contempt, which he had dared to show to the overweening and felonious arrogance of slaves in office, and minions in authority;—here he passed the first night, without bed or food. The next morning his humane keeper, the major, appeared. The plaintiff demanded, “why he was so imprisoned,” complained of hunger, and asked for the gaol allowance. Major Sandys replied with a torrent of abuse, which he concluded by saying,—“Your crime is your insolence to major Sirr; however, he disdains to trample upon you—you may appease him by proper and contrite submission; but unless you do so, you shall rot where you are.—I tell you this, that if government will not protect us, by God, we will not protect them. You will probably (for I know your insolent and ungrateful hardness) attempt to get out by an habeas corpus, but in that you will find yourself mistaken, as such a rascal deserves.” Hevey was insolent enough to issue an habeas corpus, and a return was made upon it—“that Hevey was in custody under a warrant from general Craig, on a charge of treason.” That this return was a gross falsehood, fabricated by Sirr, I am instructed to assert.—Let him prove the truth of it if he can. The judge, before whom this return was brought, felt that he had no authority to liberate the unhappy prisoner; and thus, by a most inhuman and malicious lie, my client was again remanded to the horrid mansion of pestilence and famine. Mr. Curran proceeded to describe the feelings of Mr. Hevey,—the despair of his friends—the ruin of his affairs—the insolence of Sandys—his offer to set him at large, on condition of making an abject submission to Sirr—the indignant rejection of Hevey,—the supplication of his father and sister, rather to submit to any

enemy, however base and odious, than perish in such a situation;—the repugnance of Hevey—the repetition of kind remonstrances—and the final submission of Hevey to their entreaties;—his signing a submission, dictated by Sandys, and his enlargement from confinement. Thus was he kicked from his gaol into the common mass of his fellow slaves, by yielding to the tender entreaties of the kindred that loved him, to sign, what was in fact, a release of his claim to the common rights of a human creature, by humbling himself to the brutal arrogance of a pampered slave. But he did suffer the dignity of his nature to be subdued by its kindness;—he has been enlarged, and he has brought the present action.

As to the facts that he had stated, Mr. Curran said, he would make a few observations:—it might be said for the defendant, that much of what was stated may not appear in proof. To that, he answered, that he would not have so stated, if he had not seen major Sandys in court; he had therefore put the facts against him in a way, which he thought the most likely to rouse him to a defence of his own character, if he dared to be examined as a witness. He had, he trusted, made him feel, that he had no way of escaping universal detestation, but by denying those charges, if false; and if they were not denied, being thus publicly asserted, his entire case was admitted—his original oppression in the provost was admitted—his robbery of the cup was admitted—his robbery of the mare was admitted—the lie so audaciously forged on the habeas corpus was admitted—the extortion of the infamous apology was admitted.—Again, said Mr. Curran, I challenge this worthy compeer of a worthy compeer to make his election, between proving his guilt by his own corporal oath, or by the more credible modesty of his silence. And now I have given you a mere sketch of this extraordinary history. No country governed by any settled laws, or treated with common humanity, could furnish any occurrences of such unparalleled atrocity; and if the author of *Caleb Williams*, or of the *Simple Story*, were to read the tale of this man's sufferings, it might, I think, humble the vanity of their talents (if they are not too proud to be vain), when they saw how a much more fruitful source of incident could be found in the infernal workings of the heart of a malignant slave, than in the richest copiousness of the most fertile and creative imagination. But it is the destiny of Ireland to be the scene of such horrors, and to be stung by such reptiles to madness and to death. And now I feel a sort of melancholy pleasure, in getting nearly rid of this odious and nauseous subject. It remains to me only to make a few observations as to the damages you ought to give, if you believe the case of the plaintiff to be as I have stated. I told you before, that neither pride nor spirit belong to our situation; I should be sorry to

influence you into any apish affectation of the port or stature of freedom or independence. But my advice to you is, to give the full amount of the damages laid in the declaration; and I'll tell you why I give you that advice: I think no damages could be excessive, either as a compensation for the injury of the plaintiff, or as a punishment of the savage barbarity of the defendant; but my reasons for giving you this advice lie much deeper than such considerations; they spring from a view of our present most forlorn and disastrous situation. You are now in the hands of another country; that country has no means of knowing your real condition, except by information that she may accidentally derive from transactions of a public nature. No printer would dare to publish the thousand instances of atrocity, which we have witnessed as hideous as the present, nor any one of them, unless he did it in some sort of confidence, that he could scarcely be made a public sacrifice by brutal force, for publishing what was openly proved in a court of justice.

Mr. Curran here made some pointed observations on the state of a country, where the freedom of the press is extinguished, and where another nation, by whose indolent mercy, or whose instigated fury, we may be spared or sacrificed, can know nothing of the extent of our sufferings, or our delinquency, but by casual hearsay. I know, said Mr. Curran, that those philosophers have been abused, who think that men are born in a state of war; I confess I go farther, and firmly think they cannot be reclaimed to a state of peace. When I see the conduct of man to man, I believe it. When I see the list of offences in every criminal code in Europe—when I compare the enormity of their crimes with the still greater enormity of their punishments, I retain no doubt upon the subject. But if I could hesitate as to men in the same community, I have no doubt of the inextinguishable malignity that will for ever inflame nation against nation. Well was it said, that "a nation has no heart;" towards each other nations are uniformly envious, vindictive, oppressive, and unjust. What did Spain feel for the murders or the robberies of the west?—nothing. And yet, at that time, she prided herself as much as England ever did on the elevation of her sentiment, and the refinement of her morality. Yet what an odious spectacle did she exhibit?—her bosom burning with all the fury of rapine and tyranny; her mouth full of the pious praises of the living God, and her hands red with the blood of his innocent and devoted creatures. When I advise you therefore to mark your feelings of the case before you, do not think I mean, that you could make any general impression on the morality or tenderness of the country, whose property we are become. I am not so foolish as to hope any such effect: practical justice and humanity are virtues that require laborious acts and mortifying priva-

tions; expect not therefore to find them; appeal not to them. But there are principles and feelings substituted in their place, a stupid preference and admiration of self, an affectation of humanity, and a fondness for unmerited praise; these you may find, for they cost nothing; and upon them you may produce some effect. When outrages of this kind are held up to the world, as done under the sanction of their authority, they must become odious to mankind, unless they let fall some reprobation on the immediate instruments and abettors of such deeds. An Irish lord lieutenant will shrink from the imputation of countenancing them. Great Britain will see, that it cannot be her interest to encourage such an infernal spirit of subaltern barbarity, that reduces man to a condition lower than that of the beast of the field. They will be ashamed of employing such instruments as the present defendant. When the government of Ireland lately gave up the celebrated O'Brien* to the hands of the executioner, I have no little reason to believe that they suffered as they deserved on the occasion. I have no doubt, but that your verdict of this day, if you act as you ought to do, will produce a similar effect. And as to England, I cannot too often inculcate upon you, that she knows nothing of our situation. When torture was the daily and ordinary system of the executive government, it was denied in London, with a profligacy of effrontery, equal to the barbarity with which it was exhibited in Dublin; and, if the facts that shall appear to-day should be stated at the other side of the water, I make no doubt, that very near one hundred worthy persons would be ready to deny their existence upon their honour, or, if necessary, upon their oaths.

I cannot also but observe to you, that the real state of one country is more forcibly impressed on the attention of another, by a verdict on such a subject as this, than it could be by any general description. When you endeavour to convey an idea of a great number of barbarians, practising a great variety of cruelties upon an incalculable multitude of sufferers, nothing defined or specific finds its way to the heart; nor is any sentiment excited, save that of a general, erratic, unappropriated commiseration. If, for instance, you wished to convey to the mind of an English matron the horrors of that direful period, when, in defiance of the remonstrance of the ever to be lamented Abercromby, our poor people were surrendered to the licentious brutality of the soldiery, by the authority of the state—you would vainly endeavour to give her a general picture of lust, and rapine, and murder, and conflagration. By endeavouring to comprehend every thing, you would con-

vey nothing. When the father of poetry wishes to pourtray the movements of contending armies and an embattled field, he exemplifies only, he does not describe—he does not venture to describe the perplexed and promiscuous conflicts of adverse hosts, but by the acts and fates of a few individuals he conveys a notion of the vicissitudes of the fight and the fortunes of the day. So should your story to her keep clear of generalities; instead of exhibiting the picture of an entire province, select a single object, and even in that single object do not release the imagination of your hearer from its task, by giving more than an outline. Take a cottage—place the affrighted mother of her orphan daughters at the door, the paleness of death upon her face, and more than its agonies in her heart—her aching eye, her anxious ear struggling through the mist of closing day to catch the approaches of desolation and dishonour. The ruffian gang arrives—the feast of plunder begins—the cup of madness kindles in its circulation—the wandering glances of the ravisher become concentrated upon the shrinking and devoted victim: you need not dilate—you need not expatiate—the unpolluted mother, to whom you tell the story of horror, beseeches you not to proceed; she presses her child to her heart—she drowns it in her tears—her fancy catches more than an angel's tongue could describe; at a single view she takes in the whole miserable succession of force, of profanation, of despair, of death. So it is in the question before us. If any man shall hear of this day's transaction, he cannot be so foolish as to suppose that we have been confined to a single character like those now brought before you. No, gentlemen, far from it—he will have too much common sense not to know that outrages like this are never solitary; that, where the public calamity generates imps like these, their number is as the sands of the sea, and their fury as insatiable as its waves. I am therefore anxious, that our masters should have one authenticated example of the treatment which our unhappy country suffers under the sanction of their authority; it will put a strong question to their humanity, if they have any,—to their prudence, if their pride will let them listen to it,—or, at least, to that anxiety for reputation, to that pretension to the imaginary virtues of mildness and mercy, to which even those countries the most divested of them are so ready to assert their claim, and so credulously disposed to believe that claim allowed.

There are some considerations respecting yourselves and the defendant on which I should wish to say a word. You may perhaps think your persons unsafe, if you find a verdict against so considerable a person. I know his power as well as you do—I know he might send you to the Provost, as he has done the plaintiff, and forge a return on a writ you might issue for your deliverance—I know

* He was the chief witness for the prosecution in the case of Finney, *anté* vol. 26, p. 1053, two years after which O'Brien was tried and executed for murder.

there is no spot in the devoted nation (except that on which we now are), where the story of oppression can be told or heard; but I think you can have no well-founded apprehensions. There is a time, when cruelty and oppression become satiated and fatigued; in that satiety at least you will find yourselves secure. But there is still a better security for you—the *gratitude of the worthy defendant*—if any thing could add to his honours, and his credit, and his claims, it would be your verdict for the plaintiff; for in what instance have you ever seen any man so effectually accredited and recommended, as by the public execration? what a man, for instance, might not O'Brien have been, if the envy of the gibbet had not arrested the career of his honours and preferences? In every point of view, therefore, I recommend to you to find, and to find liberally for the plaintiff. I have founded my advice upon the real circumstances of your situation; I have not endeavoured to stimulate you into any silly hectic of fancied liberty; I do not call upon you to expose yourselves by the affectation of vindicating the cause of freedom and humanity; much less do I wish to exhibit ourselves to those, whose property we are, as indignant or contumacious under their authority. Far from it, they are unquestionably the proprietors of us, they are entitled of right to drive us, and to work us; but we may be permitted modestly to suggest, that, for their own sakes, and for their own interest, a line of moderation may be drawn—that there are excesses of infiction, that human nature cannot bear. With respect to her western negroes, Great Britain has had the wisdom and humanity to feel the justice of this observation, and in some degree to act upon it; and I have too high an opinion of that great and philosophic nation, not to hope, that she might think us not undeserving of equal mildness, provided it did not interfere with her just authority over us. It would, I should even think, be for her credit, that having the honour of so illustrious a rider, we should be kept in some sort of condition, somewhat bordering upon spirit, which cannot be maintained if she suffers us to be utterly broken down, by the malicious wantonness of her grooms and jockeys.

Mr. Curran concluded by saying, that the cause was of no inconsiderable expectation, and that in whatever light the jury regarded it,—whether with respect to the two countries, or to Ireland singly, or to the parties concerned, or to their own sense of character and public duty, or to the natural consequences that must flow from the event,—they ought to consider it with the most profound attention, before they agreed upon their verdict.

EVIDENCE FOR THE PLAINTIFF.

Mr. Mac Nally.—Call general Craig; who being called three times, did not appear.

Mr. Mac Nally.—Call Peter Craig, esq.

The affidavit of the service of the subpoena on that gentleman, was read in court.

Mr. Mac Nally.—Call James Molloy, esq.

James Molloy, esq. sworn.—Examined by Mr. Mac Nally.

Do you know major Sirr?—I do.

Do you know Mr. John Hevey?—Yes.

Do you recollect being in the Commercial Buildings last September?—I do; there was some conversation between major Sirr and Mr. Hevey, on the evening of the 8th of September; Mr. Sirr said to plaintiff, "You ought to be hanged." On which Mr. Hevey said, "You lie, but you ought to be hanged." I then saw Mr. Sirr come over from the place he was sitting at, and take hold of Mr. Hevey by the collar, and he said, "I arrest you in the king's name; I will commit you to prison." This is as far as I can recollect. Mr. Sirr was not in my company. In the course of the conversation, Mr. Sirr said to Hevey, "I know you, your name is Hevey."

What did Mr. Sirr say to Mr. Hevey?—Why, my lord, there were different expressions made use of, which I do not recollect; when Hevey was told that major Sirr said, "he ought to be hanged," he turned about, and looked over at him, and Mr. Hevey has always rather a strong stern look, but then it must be worse, he replied to major Sirr, "You lie; you said, 'you ought to be hanged'; and I will make you prove it." Sirr then said, "You ought to be hanged, and I dare say you and your party think so," or words to that purpose; and Hevey said, "I am no party;" then said Mr. Sirr, "I arrest you in the king's name;" and they came to the coffee-house door; and I turned about and left the passage open to them. Sirr said to Hevey, "You ought to be hanged," and then Hevey said to Sirr, "You lie." Sirr said, "I arrest you this moment in the king's name; and you must come with me." Hevey then said, "I will go out with you, where you please. Hevey and Sirr then went out of the coffee-room; and Sirr and Hevey walked arm-in-arm together through Dame-street. That is all I know of the transaction.

James Molloy, esq. cross-examined by Mr. Fletcher.

You were at the same table with Mr. Hevey, when this conversation took place?—Yes; I afterwards came to the table where Mr. Sirr sat.

You are not very accurate in your recollection?—I recollect Sirr saying to Hevey, "You ought to be hanged."

Did not Mr. Sirr say to Hevey, "Have you a protection"?—I do not recollect; he told Hevey he would commit him to prison.

Is not Mr. Hevey now in Newgate?—I have heard so.

* Mr. Hevey was at this time confined in Newgate, under sentence of the city quarter

He is rather unfortunate. Did not Mr. Sirm say to Hevey, "Have you a protection," answer to that?—No, he did not.

Did not Mr. Sirm say to Hevey, "You have been a yeoman"?—I do not recollect that.

I ask you was Mr. Hevey a yeoman?—I think he was in the Roebuck Cavalry.

Were there any people whom you knew in the coffee-house, during this transaction?—There were.

Who?—I cannot immediately call to my recollection.

Did you see Mr. Hall in the Commercial coffee-house?—He was there.

Was Mr. Hevey a yeoman?—I recollect seeing him in uniform; I believe he was a yeoman.

Have you not heard that Mr. Hevey was tried at Kilkenny?—I believe he was.

Mr. Curran.—He was tried at Kilkenny, and was pardoned; and when Mr. Sirm saw him in September, 1801, in the Commercial coffee-house, and had the conversation stated, then said Mr. Sirm, "I arrest you in the king's name."

Mr. Greene.—Did you not observe remarks made about an orange handkerchief during the evening?—None.

Did you not see one in the hands of the plaintiff?—No.

Nor any jarring observations?—None.

Mr. Samuel Rainey sworn—examined by Mr. Orr.

Do you know Mr. Sirm?—I do.

Do you know Mr. Hevey?—I do: I never saw him to know him before September last. I went to the Commercial coffee-house on the evening of the 8th of September last. After some conversation, Mr. Sirm said to Mr. Hevey, "I will let you know who I am." Mr. Hevey made answer, and said, "I defy you." Some other words passed; Mr. Sirm said to Mr. Hevey, "You ought to be hanged;" then Mr. Hevey answered, "By God you lie." Mr. Sirm then said, "I will make you prove it."

Did Sirm tell Hevey what he arrested him for?—Not that I heard; they went out together. I returned to the coffee-house.

Mr. Samuel Rainey cross-examined by Mr. Plunkett.

Do you know was Mr. Sirm a magistrate for the county of Dublin?—I was told he was, and believe so.

He was a good deal employed in taking up persons who were active in the rebellion?—I was told so.

Had you not heard that Mr. Hevey was arrested?—Yes.

sessions, for a month's imprisonment, for having assaulted a Mr. Labertouche, with whom he had quarrelled about some words used by the latter in a tavern, respecting his transaction with major Sirm.—*Orig. Ed.*

That he, Mr. Hevey, was active during the period of the rebellion?—I have heard he was put on his trial.

Did you not hear he was what was called an active citizen before the rebellion?—I heard he was active.

What do you mean by the word active?

Mr. Curran.—Why to be sure, he means an active young man; is it not so?

Witness.—Yes.

Do you believe he was found guilty?—I cannot tell whether or not.

Mr. Barrington.—The whole proceedings of the court-martial were set aside by lord Cornwallis, who reversed the sentence of the Court.

Mr. Patrick Maguire sworn.—Examined by Mr. Wallace.

Do you know Mr. Sirm?—I do.

Do you know Mr. Hevey?—Yes.

Do you recollect the month of September last?—I do.

Have you heard of any thing which then happened to plaintiff?—Yes; he was taken into custody by Mr. Sirm, and committed to the Provost.

Had you any difficulty in getting to see him?—Yes; by much, as I could not see him.

Did you do any thing in consequence?—I did; I went by the order of major Sandys, to see Mr. Hevey in the Provost. He said he was in custody of major Sandys, under a warrant from Mr. Sirm.

What did you then do?—I returned to major Sandys, and said to him, I wondered he would detain Mr. Hevey on so trifling a matter, and Sandys replied, it was not a trifle to insult Sirm, who was in the trust of government; and Mr. Hevey would be humbled, or else he should stay where he was; that he should make a public apology, ere he would be enlarged; and if you call on Sirm, and tell him this is done, and if Mr. Sirm is satisfied, I will then discharge him on your interference.

Did you call on Sirm?—I waited on him on the 9th of September, and he replied, he did not wish to hold him longer, but to show you it was not Hevey that should be detained, he said, if I would find out the fellow who told Hevey what I said, he would punish him. I then said, if you write now to Mr. Sandys, he will discharge Hevey, and I required a letter, and he replied, you will tell Mr. Sandys, by the same token, the last conversation I had with major Sandys in the castle-yard, was on Hevey's business, he will be discharged.

Did you then call on Sandys?—I did.

What did he then say?—He told me the token was right, and that if Hevey signed the apology he left him, he would discharge him, and desired I would go into the room, and cause him to sign said paper.

Did you then go?—I did.

What sort of place did you see Mr. Hevey in?—I saw him in the Provost Prison.

Describe the prison, or where you have seen Mr. Hevey?—I cannot describe it properly.

You must describe it.—I saw Mr. Hevey in a small room (to the best of my recollection), where the first object I saw was, a man sitting in a situation that delicacy prevents me from repeating, with a yellow shirt, and seemingly quite exhausted. Five or six beds; in one of the beds was a man sitting up in it, his person filthy and a long beard, with a soldier's old coat laid over his shoulders. I saw a third man walking about reading. I suppose it was a prayer-book, and he reading the office of the dead.

Lord Kildarden.—Did you see the book?—No, my lord.

Then how can you swear it was a prayer-book?—My lord, I thought it was from the horrid appearance of the place; I was so alarmed, and the stench was so offensive from the room, that I refused to go farther than the door, lest I should get some disorder, for the beds seemed to be full of people in sickness. I spoke to Mr. Hevey about his dreadful situation, and requested him to sign the apology that major Sirr required, or to do any thing to get out of such a place; which Hevey refused. I then went to Sirr in the castle-yard, and begged of him to liberate Mr. Hevey. I told Mr. Sirr I would pay Mr. Hevey's expenses. After some conversation, he said, he had arrested Mr. Hevey in vindication of his own honour, and said he would leave it to Mr. Sandys to get Mr. Hevey discharged. Mr. Sirr gave me no note to Mr. Sandys, to get Mr. Hevey discharged; who I then told, that the friends of Mr. Hevey must get him liberated, by applying to the law for redress. I then went to Mr. Sandys, this was the next day after Mr. Hevey was arrested. I saw Mr. Sandys, I told him what Mr. Sirr had said, and Mr. Sandys said, I must excuse him; I am, said he, in an awkward situation; as Mr. Hevey is confined under a general officer's warrant, and that it must be an order from Mr. Abbot only, that could now do it. However, if proper authority is left with me, I will discharge him forthwith; and he advised me to go into Mr. Hevey's room, to get him to sign an apology; and then, said he, I will discharge him, but except he signs that paper, he said he could not; he said he would not discharge Mr. Hevey, unless he signed that apology. I then went to Mr. Hevey again, and intreated him to sign the apology; at first he refused, but at last he said he would sign it; and he having signed it, we parted. Mr. Sandys told me, that if Hevey signed the apology, he would have him discharged that day.

When was Mr. Hevey liberated?—On the 11th of September, about twelve o'clock at noon.

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Cross-examined by Mr. Jonas Greene.

Were you present at the conversation between plaintiff and defendant in the Commercial coffee-room?—I was not.

You say that Mr. Hevey objected at first to sign the apology?—Yes; but he afterwards signed an apology to major Sirr.

You called at the prison to see Mr. Hevey?—I did.

Did you see Mr. Sirr there?—I never saw Mr. Sirr there.

Are you a relation to Mr. Hevey?—No; but I have been in habits of intimacy with him a considerable time back.

You have been in company with him?—Yes.

He was a yeoman?—Yes: I saw him in uniform.

When did he cease to be a yeoman?—Some time about the year 1799; I do not know the time precisely.

Did you ever hear of any act done by him before that period?—I had been out of the kingdom, and returned 1st of June 1798. I was not a yeoman.

Have not you heard, that Mr. Hevey was brought to trial at Kilkenny?—I have heard it, and do believe it to be the case.

Did you hear that Mr. Hevey was sentenced to transportation out of the kingdom for seven years?—Yes; but to what part of the world I never heard.

Did you never hear that Hevey had been confined in the Royal Exchange?—I was not present, if he was confined in the Royal Exchange.

Did you not hear he was taken up as a suspected yeoman?—I never heard that to my knowledge; I am positive I never heard it.

Have you heard why the sentence of transportation was not put in execution?—I cannot answer that question.

Lord Kildarden.—You cannot ask the witness as to the motive that induced lord Cornwallis to liberate that man; it has been stated he was liberated by lord Cornwallis; of course Hevey has been forgiven. The witness cannot know the motive that produced his lordship's clemency.

Did Hevey make an apology to Mr. Sirr?—No; here is an apology drawn up by major Sandys, which Mr. Hevey would not sign.

Whereas I, on the night of the 8th of September last instant, in the coffee-room of the Commercial Buildings, made use of improper expressions to Mr. Sirr; I am very sorry for it, and beg your's (Mr. Sirr's) pardon, and assure you, I had, nor have not, any wish to insult any officer of this government; to whose clemency I owe my release from a sentence of a court-martial, by reversing the sentence inflicted on me, by that court-martial, &c.

11th September, 1801.

Mr. Fletcher.—There was an apology made by plaintiff?

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Witness.—There was one signed by Hevey, here it is.

Mr. Greene.—So far as it is the act of the party, it may be read; here is the paper, signed by Hevey himself.

Sir; I replied hastily to an officer of government some nights ago, for which I am since confined; I am sorry, by so doing, it has gave offence to government.—I am, Sir, yours, &c. &c.

11th September, 1801. JOHN HEVEY.

To Major Sandys.

Mr. Curran.—Here was not any thing like an authority to discharge him.

Lord Kilwarden.—At present I think Mr. Sandys acted merely as agent of Mr. Sirr—he was committed to his custody by Mr. Sirr.

Mr. Barrington.—There was no charge of high treason against Mr. Hevey in September last.

Counsel for Defendant.—We have the evidence of the former witness he did say, that Mr. Sirr said, he did not want any apology at all; and when he heard that Mr. Hevey said he would appeal to the law, then said Mr. Sirr to the witness, I will go to Mr. Abbot and get the man released.

Court.—Do you rest the case here on the part of the plaintiff?

Counsel for Plaintiff.—Yes, my lord.

William Fletcher, esq.—My lord, and gentlemen of the jury; In this case I am of counsel for major Sirr, the defendant in this action. Gentlemen of the jury, I should have been the last man, that would have been called upon as counsel for the defendant, had he been such a man as has been represented to you. This action is brought to recover the enormous sum of 5,000*l.*; that sum my eloquent and ingenious friend Mr. Curran has told you is so trivial, that you ought to find the verdict to the full amount of the damages laid in the declaration. He has in this statement mentioned many things that are totally irrelevant to the present case; he has lamented that the damages were not laid at 10,000*l.*—he has attributed the conduct of my client to the plaintiff, as if malice was prevailing in his mind against the plaintiff; such an assertion is not capable of being given in proof on an action for an assault; but malice had no share in the transaction; we cannot give in evidence the intentions of a man; no—to harbour a malicious intention would degrade the dignity of human nature.—he was incapable of feeling resentment against the plaintiff. The defendant did know, that there had been the sentence of transportation awarded by a court-martial held at Kilkenny, against a man of the name of Hevey; but as to any knowledge the defendant had of him, he was as ignorant as he is of a man in South America. Mr. Sirr was informed, in the coffee-room of the Commercial Buildings, that such a man sitting there was of the name of Hevey; and recollecting

there was a man of that name tried at Kilkenny, he did, after some little conversation, ask him was he not once in the Provost Marshalsea, and had he not been tried and found guilty at Kilkenny; and asked him to show his protection, and to account why he was found at large; Hevey refused to give defendant any satisfactory answer; and then Mr. Sirr told him, if he did not, he must arrest him till he found out the truth: and for this conduct of the defendant, the plaintiff now applies to you, gentlemen of the jury, to be recompensed in damages to the amount of 5,000*l.*! I shall not, gentlemen, attempt to display that profusion of eloquence you have heard from my ingenious and learned friend; but I will state the facts that will appear in evidence, on behalf of the defendant, my client in this case; and you will consider what injury the defendant has sustained, before you on your oaths would find a verdict to the amount of the enormous sum of 5,000*l.* You will consider the evidences which have, and those that will be, produced to you. There have been many circumstances mentioned in the statement of plaintiff's case, by his ingenious advocate, that are incapable of being given in evidence. You may therefore venture to put out of your minds three-fourths of the statement, there being, as I have already mentioned, many circumstances stated, that could not be sent up to you for your investigation and consideration.

We shall produce evidence to prove facts of a public nature:—as to common fame, it is no foundation to state to gentlemen of your understandings any facts grounded on reports of common fame. I must observe to you, gentlemen, that my learned friend has stated to you, that the liberty of this country was in danger of being destroyed; as if liberty was only to be found within these walls; but I trust this representation is not the case, for liberty exists in every part of Ireland as well as within these walls, and the liberty of the press is preserved inviolable, and I doubt not but you may read, in some of the newspapers that may be published in a few days, that there was on such a day, a trial wherein Mr. Hevey was plaintiff, and Mr. Sirr defendant, on an action for an assault and false imprisonment, when Mr. Curran displayed his usual great abilities on behalf of his client, with amazing eloquence and energy, and the witnesses were produced to prove the facts stated by the learned counsel, when it appeared, the jury did not give credit to their testimony, for they found a verdict in favour of the defendant; peradventure such a paragraph may appear in the public newspapers; for I have no doubt but that you will find your verdict in favour of my client, and against the plaintiff in this action.

I shall not, gentlemen of the jury, state any thing on the part of my client, Mr. Sirr, that will not be proved in evidence; it appears that the defendant accidentally went

into the coffee-house of the Commercial Buildings, with some other gentlemen; they sat down and took coffee, and there happened to be sitting in the same coffee-room, the plaintiff in this action, and some person having said, you live, sir, a good deal in the country where persons live who were accused of being active in the late rebellion; to which Mr. Sirr replied, I am not in the least afraid of any of them; it was then pointed out that there was a man in the room of the name of Hevey, who had been charged and tried on an accusation of that nature, and had been sentenced to transportation; to which Mr. Sirr, in a low voice made answer, "he deserved to be hanged;" and then some busy intermeddling officious person, went to Hevey and told him what Mr. Sirr, in a low voice, had said; and then the conversation took place which will be given in evidence—I demand to see your protection; you know me—yes, said plaintiff, I know you are major Sirr; but would give him no answer, as to showing how he became at large; and when Mr. Sirr brought him to his office in the castle-yard, he again asked him to show his protection; and then plaintiff, in a swaggering, blustering manner, said, "as to my protection, go ask your betters for it." Now if Mr. Hevey had thought proper to have told Mr. Sirr, "true it is, I was tried at Kilkenny, and was found guilty, and was sentenced to transportation, but I have been, by lord Cornwallis, set at liberty:—if Mr. Hevey had mentioned those words to Mr. Sirr, you never would have heard of this action.

See, gentlemen, the evidence that has been given on the part of the plaintiff in support of this action; the first witness was Mr. Molloy—the second was Mr. Rainey—and the third witness was Mr. Maguire. [Here the learned counsel, on the part of the defendant, with great accuracy and perspicuity, recapitulated the testimony which those three gentlemen had given, on their direct and cross-examination; and which the reader will see set out in the foregoing part of this report; it is therefore deemed unnecessary to repeat it.] It does appear, that in the course of the conversation, Mr. Sirr did ask Hevey to show his protection, if he had any, which Hevey refused to do, and the said witnesses said, that Mr. Sirr did say to Hevey, "you deserve to be hanged," and Hevey answered "you lie, you are a liar." This is not the case of an ordinary person; here was a man who had been accused of high treason, to the defendant's own knowledge, had been tried for that offence, and had been convicted; and he afterwards appeared at large, and defendant seeing him at large, asked him to show his certificate of a pardon; or, said he, I must detain you till I investigate, whether you ever received a pardon or not, and on Hevey still refusing to give the defendant any satisfactory answer, he did hold him in custody, which as one of his majesty's subjects

he had a right to do, if such a man had been charged with high treason, and refused to give an account how he came to be at large. A private individual may seize a person charged with high treason, and bring him before a magistrate: it has appeared in evidence, that it was a matter of public notoriety, that the defendant was a magistrate, and had been very active in the apprehension of a great number of persons charged with high treason, at the time of the late rebellion; and this country owes much of its present tranquillity to the very great exertions and laudable efforts of the defendant to crush that rebellion; Mr. Sirr appears not to be negligent of his duty—he knew that a man of the name of Hevey had been, in 1798, accused of high treason, and seeing a man of that name pointed out to him in the Commercial coffee-house, asked Mr. Hevey, were you not in the Provost prison, and were you not tried and convicted of high treason? show me by what authority you are at large; how easy was it for Mr. Hevey to say, I am that person, and since the trial was had, lord Cornwallis has given me a free pardon.

Gentlemen of the jury, you will judge of this case merely upon the evidence adduced to you, and not from any statement of the counsel on one side or on the other; I am sure you must have in your recollection the mild and lenient government of this country, under the administration of the marquis Cornwallis; he did think proper in mercy to reverse the sentence of several courts-martial, where persons charged with high treason were found guilty; he liberated from death many persons, and surely a man so liberated, could easily have said, "I have been pardoned through the clemency of the marquis Cornwallis," and therefore the sentence of the court-martial was not carried into execution; and thus Mr. Hevey would have been cleared from any stigma whatsoever. It will appear most clearly in evidence, that the arresting of Hevey by Mr. Sirr in the Commercial coffee-house, was not through wantonness, or maliciousness—Mr. Hevey has been since enlarged, and that also appears to be the fact. The plaintiff has not attempted, by a single scintilla of evidence, to say, he was arrested wantonly or maliciously. You are to presume, that the government of this country acted wisely and mercifully in pardoning many persons who had been found guilty by courts-martial, of high treason—you have no evidence, on which you can infer, that Mr. Sirr arrested Mr. Hevey out of malice; or for the gratification of any purpose of his own. The learned judge who now tries the cause will correct me, in point of law, in any matter in which I may mistake;—but I hold the law to be, that a magistrate does not do his duty as such, who, if told a man charged with high treason, and convicted, is seen at large, does not inquire why he appears at large. Gentlemen of the jury, it is a matter of notoriety,

that Mr. Sirr was an active magistrate during the time of the late rebellion; and by his exertions in apprehending rebels, he did essentially contribute to save this commercial country from scenes of blood. You cannot presume that Mr. Sirr knew the fact, that lord Cornwallis had pardoned Hevey, and yet knowing that fact, he apprehended Hevey out of malice. You are not entitled to make such a presumption; for the law will not permit you so to do—this man did stand his trial on a charge of high treason; and the court-martial found him guilty; that was a fact known to defendant—he was afterwards pardoned, that was a fact that was then not known to defendant—and therefore he asked Hevey, had he a protection, and if he had, to produce it. At the time of the rebellion, the trial by courts-martial, of persons accused of treason, was expedient, and it was judged so by the legislature; to suppress the rebellion, there were at that time particular duties entrusted to particular persons, and in the exercise of a particular duty, several matters came under the discretion of the person in discharge of that duty; and the law will presume a magistrate acts uprightly, unless the contrary is proved. A person employed in the exercise of a particular duty, may from proper, fair, and laudable motives, inquire of a man whom he knew to have been convicted by a court-martial, why he appears at large; the man could easily have said, I have received a pardon from lord Cornwallis. Would you not give a man credit for making such an inquiry? A man may have been charged with treason in 1798, he may have been tried, the evidences may have been mistaken in the man, he may by mistake be found guilty; but when the proceedings of a court-martial are laid before the lord lieutenant, he may set aside the sentence, and liberate the man, as not being a man active in the rebellion, although charged with being so; for a person is presumed innocent, until the contrary appears.

Gentlemen of the jury, let me ask you, what evidence has there been laid before you, sufficient for you on your oaths to find, that Mr. Sirr acted from malicious motives towards the prisoner?—it is for the Searcher of all hearts alone, to investigate the motives of human actions,—in the present case, however, it appears to be developed by the man himself; you have evidence under his own hand, that he had been charged with the crime of high treason, and was found guilty, and received afterwards his pardon through the clemency of the late lord lieutenant. It does not appear that Mr. Sirr had any malice towards him; he met him accidentally in the coffee-room; he took him to his office in the castle-yard, and asked him his name and residence; and then said, as you were tried and convicted, show me your protection, if you have one; but Hevey, instead of producing the certificate to Mr. Sirr, or directing him where he could see it, bid him ask his betters

for it. As to the plaintiff having a favourite mare taken from him by any person, no evidence of it has been given; and therefore I do not know what foundation there was to introduce any thing about her in this case. Let me ask you, on what ground is my client to be deprived of the common benefit in this case? are you to suppose there was malice in Mr. Sirr's mind against the plaintiff? By the general law of the land, you cannot impute malice unless proved; and the evidence is totally silent as to the charge of malice.—On what ground, then, are you to find a verdict for the enormous damages of 5,000*l.*?—By the general rule of evidence, every man shall be deemed innocent until the contrary appears; my client, therefore, shall have the benefit of the law, which every other man has.

As to what has been given in evidence, respecting Mr. Sandys's conduct to Hevey, my client is not called upon to answer for the conduct of Mr. Sandys: Mr. Sirr is only accountable for his own conduct; I am not vindicating Mr. Sandys; the plaintiff is at liberty to bring an action against Mr. Sandys, if he thinks proper. It appears that Mr. Sandys is the keeper of the prison called the Provost, a prison appropriated for the safe custody of persons charged with the crime of high treason. In the period of 1798, Mr. Hevey was charged with the crime of high treason, and he was brought to the Royal Exchange in custody, and from thence taken to the Provost—he was brought to trial, convicted, and afterwards pardoned. I see no ground on which the learned gentleman who preceded me, bestowed the phillipic on the government of this country—we have the same liberty remaining among us we ever had. In the year 1798, this country was infested with a horde of vipers, who were guilty of rebellious practices against the liberty and welfare of their own country. The liberty of this country, and the peace of this country, is now restored—The liberty of the press is as much revered and esteemed now as in any age whatsoever; you will no doubt see in the newspaper (for the press is not silent) a paragraph, stating, that this day a case was tried, of Hevey versus Sirr, in which case Mr. Curran appeared of counsel for the plaintiff, and in the most eloquent speech we ever remember to have heard, made some strictures on the government of this country, in very strong terms, and represented that the defendant ought to be assessed in very heavy damages; we have only to lament that the jury was not of that learned counsel's opinion, for they found a verdict against his client.

In truth, gentlemen of the jury, you are to decide this case upon the evidence: Mr. Maguire has told you what passed in the prison of the Provost; but it was the other two witnesses, who gave evidence of the arrest of Mr. Hevey in the Commercial Buildings. As to Mr. Hevey being put into the room where

persons were lying ill with infectious disorders, and where it appeared a man was lying so ill, that he saw a person reading prayers by him, as the witness believed—if Mr. Hevey was put into such a room, that is to be imputed to Mr. Sandys, and not to Mr. Sirr, for my client had nothing to do with it. Mr. Sirr was not the keeper of that prison; there is no charge that Mr. Sirr put the plaintiff into that room; for the actions of Mr. Sandys my client is not answerable. Mr. Maguire did tell you he had long been intimate with plaintiff, and then Mr. Hevey did sign the apology to Mr. Sirr, which has been read in evidence. If any thing was done improperly to Mr. Hevey when in the Provost, why does not Mr. Hevey prosecute Mr. Sandys for it? why did he not bring his action against Mr. Sandys, and not make that a charge, to increase the damages as against Mr. Sirr?—As to what passed in the Commercial Buildings, I must observe that Mr. Sirr was well known to be a public magistrate; he it was, who was insulted in the execution of his office by Mr. Hevey—that is an indictable offence of common law. Mr. Hevey has now thought fit to bring an action of damages against my client, because Hevey, who had been found guilty by a court-martial, appeared at large, without assigning any reason, when asked by the defendant, why the sentence of the court-martial had not been put in execution against the plaintiff.—The plaintiff, after abusing the defendant in the manner the witness has told you, now calls on you, gentlemen of the jury, to give him a verdict of 5,000*l.* damages. You are not prepared to say what evidence appeared before the court-martial on the trial; but you are prepared to say, that the lord lieutenant was invested with the power of reversing the sentence of the court-martial, and pardoning the prisoner of any crime committed by him. We do know that courts-martial were invested with power to try persons accused of high treason—the courts-martial were invested with that power by the government of this country, and by the act of the legislature passed in 1796; such was then the unhappy turbulence of the times, as rendered it necessary, in order to crush the rebellion. Hevey was found guilty by a court-martial, he was afterwards pardoned, and he is now to be considered as innocent. We must however presume the sentence passed by the court-martial was right, according to the evidence which then appeared before that court, although it was not signed by the lord lieutenant, who did not think proper to carry the sentence into effect. But let me ask you, gentlemen of the jury, is Mr. Hevey now to be considered as an injured man, to fasten this impression on your minds, that he had not committed any offence. It has been said by my learned friend, you will judge what degree of criminality attached upon Mr. Sirr, for committing the assault and false imprisonment laid in

the declaration; but, gentlemen of the jury, you will be told by the noble and learned judge who presides on this trial, what the law in this case is, and as to the facts, you will judge from the evidence, whether you on your oaths can be justified in finding a verdict against Mr. Sirr. The notoriety of Mr. Sirr's exertions to crush the late rebellion, has been noticed, with more than trumpet tongues; it is notorious he did exert himself to find out and apprehend those who in the time of the rebellion met for the worst of purposes. Do you think that Mr. Hevey has deserved credit for his conduct, and therefore merits that you should give him the excessive damages of 5,000*l.*? Is it because the sentence of the court-martial has not been carried into execution against him, therefore you are to give him the enormous damages of 5,000*l.*?—The act of amnesty did protect persons of his description, for it must now be taken for granted, that he had been once a traitor, and a double traitor, because he was a yeoman, at the very instant he was charged with the crime of high treason: It must ever be remembered with gratitude, that it was by the exertions of the yeomanry of Ireland, the late rebellion has been crushed. If your lordship thinks, that in point of law, there ought to be any verdict against the defendant, then, gentlemen of the jury, you will judge whether the damages ought to be to any amount; or only nominal, as 6*d.* damages. We will go into evidence, on the part of the defendant, and it is with confidence I commit my client's case to your consideration.

Mr. Plunkett.—Call John Goulding. We call him to show that the plaintiff Hevey was a yeoman, and that he being then in the year 1798 a yeoman, was charged notwithstanding with being active in the rebellion, and was liable to be apprehended and tried on that charge.

Lord Kilwarden.—If Mr. Sirr had a reasonable ground to suspect a man guilty of treason, he ought in point of law, to carry the man before a magistrate. Did Mr. Sirr do so? is that the ground of your defence?

Counsel for Plaintiff.—We do not admit that Mr. Hevey had been a yeoman.

Mr. Hall sworn.

Do you know Mr. Sirr?—I do.

Do you know Mr. Hevey?—Yes; the first time I saw him was on the night of the 8th of September last, at the Commercial coffee-house. I was there at the beginning of this business.

What passed?—I was in the coffee-room, and Mr. Sirr came in and he sat down, and talked on different subjects; but particularly about a house he had lately taken at the foot of the mountains; and I told him I was surprised he would take a place there, as the boys might pay him a visit. He replied, "He was not afraid of rebels in any place; and there is one of them," looking over at

Mr. Hevey, who was at another table; Mr. Sirr spoke in so low a voice, as scarcely to be heard. Mr. Hevey then came up, and said to Mr. Sirr, "you ought to be hanged;" meaning the major—major Sirr then said, "were you not confined in the Provost?" Hevey said, "Many better men than either you or I were so; and I say, you ought to be hanged." Major Sirr then repeated that Hevey ought to be hanged; then Hevey said to Mr. Sirr, "Assign your reason, I defy you; I think you ought to be hanged." The major then said, "I dare say you and your party think so"; and Hevey said then to Mr. Sirr, "You are a liar, I am of no party;" and major Sirr asked where he lived, and Hevey then said, he lived in Thomas-court.

Did any thing else pass relative to any trial?—Not at that time.

Did you see any thing else pass?—Mr. Sirr said to Hevey, show me how you got out of the Provost; Mr. Sirr then took Hevey down the Castle-yard; they walked down the street arm in arm; I followed them to the Castle-yard. Hevey refused to give Mr. Sirr any account, but said, he would go with Mr. Sirr where he pleased.

Was he handcuffed?—No; I followed them to Mr. Sirr's office in the lower Castle-yard; Mr. Sirr there sat down in a chair, and asked Hevey, is your name John Hevey? Mr. Hevey said it was; Mr. Sirr then asked him where do you live, Mr. Hevey answered, in Thomas-court; Mr. Sirr then asked him, were you ever tried at Kilkenny, Mr. Hevey answered, he was; then, said Mr. Sirr, show me how you came to be at large, or I will commit you to the Provost. Mr. Hevey then said to Mr. Sirr, go ask your betters. Mr. Hevey would not answer Mr. Sirr any questions whatsoever; Mr. Hevey was then taken to the Provost; Mr. Sirr said to Mr. Hevey, I suppose you could give me some answer. Mr. Sirr frequently asked Mr. Hevey to give him some account, Mr. Hevey bid Mr. Sirr to ask his betters, and then said, he would answer no question whatsoever. I then went and addressed Mr. Hevey, and begged him to satisfy major Sirr, and if he had not his protection about him, that I would go with pleasure to get it for him, or would call on any friend to come to him, so as to get him out of his situation; he refused my interference; major Sirr then went over to his desk and took out some paper, and Hevey was sent by a guard of soldiers to the Provost; Mr. Hevey was not handcuffed; Mr. Sirr remained behind with me.

Mr. Hall cross-examined by Mr. Curran.

You were talking in the Commercial coffee-house with Mr. Sirr about his country-house?—Yes.

I suppose it is a very fine house, no doubt?—Why, I cannot say, I have never seen the inside.

You will not be long so Mr. Hall, you will

soon receive a card of invitation—of what profession are you?—I am an attorney.

Are you not in the office of Mr. Heppenstal?—I am.

Are you not a clerk to Mr. Heppenstal?—I am, but I have some private property.

I see you are a gentleman of good sense—had Mr. Sirr an idea at first of arresting Mr. Hevey.—I suppose he had no idea of taking Mr. Hevey into custody; he would not descend to take Mr. Hevey into custody; for he did not know Hevey or he would not have asked him his name; if he had known Hevey he might have taken him at the time he stood up to him; Mr. Sirr said he did not know he was the man, this forms a reasonable belief, that he had no intention of arresting him, for Mr. Sirr did not appear to have known Mr. Hevey when he first saw him in the coffee-room.

Your evidence is, that you believe Mr. Sirr did not know Mr. Hevey, and therefore you believe that Mr. Sirr did not intend to take Mr. Hevey into custody?—Yes; he knew the man when he said his name was Hevey, and because he said he had been tried at Kilkenny.

Do you believe he gave any authority, and why he committed Mr. Hevey to the Provost?—Mr. Sirr did write some paper and delivered it to the guard, who went with Mr. Hevey to the Provost.

Do you believe it was under the authority of Mr. Sirr, that Mr. Hevey was committed?—Most undoubtedly.

Was there an application to general Craig made for a warrant?—There was no time for such application by the major until the committal; I do not believe Mr. Hevey was sent to the prison under the authority of general Craig; I do believe Mr. Hevey was sent to prison without the knowledge of general Craig at that time.

Do you believe he was committed to the Provost by Mr. Sirr?—I do.

Do you believe that Mr. Hevey had been living in the city of Dublin for some time, and carried on the business of a brewer?—I do not know, I cannot form a belief.

Did you see the sentence of the court-martial at Kilkenny?—I saw a copy of the sentence of the court-martial, but not the original.

Do you believe Mr. Hevey was set at liberty by the lord lieutenant?—I do believe it.

What is your reason for believing it?—I saw Mr. Hevey at his liberty.

Was Hevey discharged by the lord lieutenant?—It was so mentioned in the copy I saw; Hevey not being active in the rebellion.

What was the court-martial's opinion of Hevey's criminality?—I cannot answer that.

Do you make a defence for Mr. Sirr?—I am sure I do not.

Was Mr. Hevey enlarged on giving security?—I should suppose so; I cannot form a belief about it.

Do you believe he was serious in the apology he made to Mr. Sirr?—I heard in court this day, that Mr. Sirr had refused to accept of any apology.

Do you know Mr. Sandys?—Yes.

Do you believe he is in court?—I believe so.

Upon the whole of this transaction, had Hevey a resentment to Mr. Sirr?—From the contents of the apology I should suppose not.

Lord Kildarden.—This gentleman says, that Mr. Hevey was set at liberty, and that Mr. Sirr refused to accept the apology.

Was the certificate sent to Mr. Sandys to discharge Mr. Hevey?—I suppose it was lodged with Mr. Sandys or he could have no power to discharge him.

Mr. Sirr must have known it?—I believe he must have heard it.

What brought you to Mr. Sirr's office?—I went merely out of curiosity.

You believe that Mr. Hevey has been discharged regularly?—Mr. Sirr must have believed it as well as me.

Do you believe that Mr. Sirr knew at the time of the arrest, that Mr. Hevey had been regularly discharged?—I believe he might not then have known it.

Do you believe that was the case?—Yes.

Did you see the original order by the lord lieutenant, to discharge Mr. Hevey?—I saw a copy of it.

When was Mr. Hevey tried at Kilkenny?—In 1798.

How long did he remain in prison?—I do not know how long.

Did not the lord lieutenant go into the country, and there release many prisoners?—He surely did.

Had prisoners discharged any protections given them?—Almost all the rebels who were discharged, had protections; I suppose so.

[Case closed on the part of the Defendant.]

Mr. Plunkett.—Mr. Hevey had been brought up before Mr. Justice Chamberlain, and the return was, that he had been arrested by the authority of general Craig.

Mr. Plunkett.—My lord, and gentlemen of the Jury;—In this case I am counsel for major Sirr. This is an action brought by plaintiff, for arresting him in the coffee-house of the Commercial Buildings.—I was in hopes it would not have been necessary for me to address you: had it not been that my learned friend, Mr. Barrington, mentioned his intention of addressing you on the part of his client; it therefore becomes my duty to offer a few words to you on the part of major Sirr.

My lords, and gentlemen of the jury, this is

an action brought by Mr. Hevey the plaintiff, for an assault and false imprisonment, and the plaintiff has laid his damages at the enormous sum of 5,000*l.*, and requires you upon your oaths to find a verdict to that amount, as a compensation for the injury he alleges to have sustained. Let me ask why are these excessive damages demanded? It is in order to show to the inhabitants of our sister kingdom that we were absolute slaves:—I do believe we enjoy the blessings of liberty here, as much as in our sister kingdom, notwithstanding what has been said by my learned friend. I differ from my learned friend, who advised you to find a verdict for 5,000*l.* for if you should find your verdict against my client you will no doubt find a verdict with very small damages. I know you will be addressed by my learned friend who follows me, but if he confines himself to the naked question in this case, his argument cannot take up much time; he has been lately in the habit of addressing himself to the citizens of Dublin, and he is anxious that the real sentiments of his mind shall be known to them.

Gentlemen of the jury, one ground on which you have been called upon, to give such large damages to the plaintiff is, that Hevey was imprisoned through the malice of the defendant; let us examine whether in truth there was any malicious motive which induced the transaction that has given rise to this action for damages. Mr. Hevey, it has been stated to you, has been held by his fellow-citizens in the most respectable light, and that he was happy in enjoying the good esteem and society of the principal traders in this metropolis. Gentlemen it has appeared in evidence, that in 1798 Mr. Hevey was a yeoman; he appeared then as one of those gallant volunteers, who in the hour of peril and danger boldly stepped forward to crush the rebellion; it is to the efforts of the volunteers that we now enjoy our tranquillity; we relied on the protection of the yeomanry of Ireland for its defence—upon the faith of the loyalty of the yeomanry we placed the greatest confidence. Mr. Hevey was in 1798 a yeoman, he appeared in the uniform of those illustrious bands; he must as such, have taken the oaths of allegiance, and other oaths as a yeoman, to do the duty his station required. The loyalty of the yeomanry of Ireland obtained the approbation of government. The loyalty of Mr. Hevey was however doubted, notwithstanding he did appear as a yeoman in uniform. There was a charge exhibited against him, of being active in the rebellion,—although he had taken the oath of allegiance,—and that he was a rebel; he was thereupon apprehended on the charge of high treason, and he was brought up a prisoner to the Royal Exchange, from thence he was committed a prisoner to the Provost, and thence sent to Kilkenny, where he was tried and found guilty, by a court-martial, and received sentence to be transported for seven

years, which sentence lord Cornwallis was pleased to revoke. But, gentlemen of the jury, he was found guilty by the court-martial, and you can have now not any doubt of the fact; you have no foundation now to say he was then innocent, for the court-martial found him guilty of high treason; he had broken the oath of allegiance, which as a yeoman he had taken. The lenity of government did extend to him, and the sentence of transportation against him was reversed, and he was enlarged, having given security for his keeping the peace. Now gentlemen of the jury, it was under these circumstances he was enlarged, and he appeared at large; but whether he got a licence to empower him to be at large, does not appear in evidence. Mr. Sirr, was a magistrate, to whose meritorious services, this nation is highly indebted for its preservation: he was a gentleman by whose exertions many persons accused of high treason, were apprehended. Mr. Sirr had no personal knowledge of the plaintiff before the night of the 8th of September, and he had no previous malice against him; there was not an atom of malice on the part of Mr. Sirr. On the night of the 8th of September Mr. Sirr was sitting in the Commercial coffee-room with some gentlemen, and a person came into the coffee-room whom Mr. Sirr was told was of the name of Hevey, Mr. Sirr recollected there was a man of that name, who had in 1798 been tried at Kilkenny, and had been sentenced to transportation; he therefore conceived it proper to inquire, why he appeared at large; and after some little conversation, Mr. Sirr asked Mr. Hevey to show him his protection; Mr. Hevey, in a blustering swaggering manner, thought proper to refuse to give him any satisfactory answer; then, said Mr. Sirr, if you do not give me a satisfactory answer as to that point, I must arrest you till the truth is inquired into. If you have a protection tell me where I can see it; Mr. Hevey did tell Mr. Sirr at his office, *he might go and ask his betters for it*. There was a person of the name of Maguire (but not the Mr. Maguire who was produced as a witness on this table) who had been tried on a charge of high treason, when a witness who appeared on the part of the prosecution, was, as alleged by Mr. Hevey, a person of infamous character; and Hevey gave evidence of it; and that Maguire it appears was acquitted. But let me ask, is that transaction any ground for you, gentlemen of the jury, to believe that there was any malice in the mind of Mr. Sirr against the plaintiff? but I shall not detain you on this part of the case. Gentlemen, it is evident that there could not exist any malice in the mind of Mr. Sirr, previous to the 8th of September; now, let us examine into the transactions which took place between plaintiff and defendant on that day. Mr. Sirr and a gentleman with him, was sitting in the Commercial coffee-room, and the gentleman said to Mr. Sirr, your residence in the coun-

try is amongst many of those who had been rebels in 1798, and Mr. Sirr admitted it, but added these words, "he was not afraid of any of them;" Mr. Hevey happened accidentally to come into the coffee-room, and the gentleman said to Mr. Sirr, there is one of them; a person who happened to sit near the table where Mr. Sirr was sitting, heard the conversation, and these words spoken, "he ought to be hanged;" although these words were spoken in a low voice, yet they were overheard, and some officious person told Hevey these words were said; on which Hevey turned round, and went up to Mr. Sirr and asked him, did he say these words; and then said, you, meaning Mr. Sirr, ought to be hanged, you are a liar; these words of Mr. Hevey were heard by every person present, as the witness this day has told you. There has been evidence laid before you of the assault and abusive words given by Mr. Hevey to Mr. Sirr, and spoke in a ferocious manner, in a public coffee-room, where many persons heard the altercation between these two persons. Mr. Sirr asked Mr. Hevey to show him his protection, which Mr. Hevey refused to do, and then Mr. Sirr said, he must detain him, till he showed him why he was seen at large, having been at Kilkenny sentenced to transportation for seven years;—Mr. Hevey did, instead of showing his protection, say to Mr. Sirr, "You ought to be hanged; you are a liar." It has appeared in evidence, that Mr. Hevey was tried for high treason, and was convicted, and was afterwards discharged by the lord lieutenant: Mr. Sirr had a right to ask Mr. Hevey why he was seen at large, and he refusing to give Mr. Sirr any satisfactory answer, Mr. Sirr did bring him to his office, in the lower Castle-yard, in order to inquire into the fact, whether Mr. Hevey had, or had not, any protection granted to him, or had been pardoned, after being by the court-martial sentenced to transportation for seven years. When Mr. Sirr did bring him to his office, he asked him his name and residence, and whether he had, or had not, been tried at Kilkenny; he told Mr. Sirr that his name was Hevey, and his residence in Thomas-court, and acknowledged he had been tried at Kilkenny; but in answer to Mr. Sirr, about Mr. Hevey showing him his protection, he said, "Go ask your betters." On which, Mr. Sirr said, I must commit you to gaol, until that matter is inquired into.

Now, gentlemen of the jury, this is the case of the plaintiff, who now brings this action, seeking for redress for the injury he has received, and he brings his action of damages, to the enormous amount of 5,000*l.*; who, if he had told Mr. Sirr, when asked by him had he a protection, and had then said, I have been pardoned by lord Cornwallis; there would have been an end of the business. It has been said, that Mr. Hevey was committed to the Provost prison, and that he was

loaded with manacles; there has not been an atom of evidence given, that any kind of manacles whatsoever, was put on Mr. Hevey.

Gentlemen of the jury, as to what happened to Mr. Hevey, after he was put into the Provost, in the custody of Mr. Sandys, certainly Mr. Sirr has nothing to say; for the conduct of Mr. Sandys, is not to be visited upon my client. The next day Mr. Sandys told Mr. Hevey, if he would make an apology to Mr. Sirr, he would endeavour to get him discharged.—Mr. Hevey refused to make any apology, and said, he would appeal to the law; he was thereupon brought before Mr. Justice Chamberlaine, who was pleased to remand him to prison; as it appeared he was in custody, under a charge from general Craig; after this Mr. Hevey said, he would sign an apology; but Mr. Sirr said, I do not want any apology, but as Mr. Hevey appeals to the law, I will go to Mr. Abbot, and endeavour to get the man discharged; and it appears that he has been since—that is, the 11th of September, at 12 o'clock—discharged. I do conceive the law to be, that Mr. Sirr was bound by his duty, to inquire of a man whom he saw at large, after he had been sentenced to transportation, why the sentence was not carried into execution; and to detain him a reasonable time, until that fact was inquired into.—I do say he must, however, have a reasonable ground of suspicion for detaining him; in this case it is admitted that Mr. Sirr did know, that a man of the name of Hevey, had been tried at Kilkenny, and had been found guilty, and received sentence of transportation; and afterwards being pointed out to him, seeing him at large, he did inquire of him, why the sentence was not carried into execution; and though it was very easy for Mr. Hevey to have told Mr. Sirr, that he had received a pardon, he refused to give any satisfactory answer to Mr. Sirr. By the terms of the amnesty act, Mr. Hevey was called upon to produce his discharge, and show that he was discharged by due course of law; he might have said, I have a certificate of it—if Mr. Hevey had said that to Mr. Sirr, he would have been immediately discharged. In this case, Mr. Sirr had a reasonable ground for suspicion of Mr. Hevey, that is not denied; but as soon as Mr. Sirr had—about the 11th of September—discovered that Mr. Hevey had received a pardon from lord Cornwallis, when lord lieutenant, Mr. Sirr immediately went to Mr. Abbot, and obtained from him a discharge of this man from the Provost. This therefore is a good defence, on the part of my client, under the direction of the Court, in point of law, to induce you, gentlemen of the jury, to find your verdict in favour of my client; but should you, gentlemen, find a verdict for the plaintiff, the next point that comes under consideration is, whether you would only find nominal, or perhaps 6*d.* damages. But it is for you, gentlemen, to ascertain the quantum

of damages; it is for you to take into your estimation, the circumstances of the parties; it has appeared to you in evidence, that Mr. Hevey, although he was found by the court-martial guilty, was since pardoned through the lenity and humanity of government. As to Mr. Hevey's present situation, he is now a prisoner in Newgate. You are now upon your oaths to say, what injury this man hath sustained; and to say whether or no, you will give him any more than nominal damages.

Now, gentlemen of the jury, it is for you to consider what has been the conduct of Mr. Sirr, that he should be the gentleman, who should have vindictive damages awarded against him: for what hath this gentleman done? He has merely acted in discharge of his duty, in the manner the witnesses have told you—he hath for some years taken most active part in apprehending traitors, and in suppressing the late rebellion; and prevented thereby, the then threatened invasion of this country. His conduct has been in the highest degree praise-worthy; and until the transaction happened, which hath been the subject of this present action, no imputation whatsoever could ever be attached to him for any part of his conduct, either public or private. You cannot therefore gentlemen, but consider the conduct of Mr. Sirr, as that of a man acting in the honest exercise of his duty. Give me leave to refer to your consideration, the periods of 1798 and 1799, when the exertions of Mr. Sirr, contributed very essentially to the suppression of the rebellion;—I shall only add, are those public services to have no weight in your mind; that you, by your verdict, would not protect him from the vindictive claim of the plaintiff, who has brought this action, and laid his damages, at the great sum of 5,000*l.*? But I have no doubt, your verdict will be such, as will meet the justice of this case.

Mr. Barrington.—My Lord, and gentlemen of the jury; In this case, I am counsel on behalf of the plaintiff, Mr. Hevey—I feel it an indispensable duty, to speak to this case, as I conceive it to be one of the greatest importance, not only to the plaintiff, but to the crown and to the country. The plaintiff has brought his action to recover damages against the defendant, for a violation of the law, and an assault upon the constitution. He has brought his case before you with confidence, and calls steadily for justice; not merely to vindicate his own character, or to avenge his own wrongs—not with the view of mercenary damages, or a malicious triumph—but he calls for justice against the public officer, who has abused the public trust in his person; and in his person has endeavoured to convert the legal authority of the crown, into a despotic instrument against the subject. My learned friend, Mr. Plunkett, has declared sincerely, his reluctance to speak to evidence; I am convinced it proceeded from an honest consciousness of a bad cause, which blunts

his ingenuity, and flattens his talents, when he is called forth as the reluctant advocate of tyranny or of oppression. You have heard him unlike himself, speaking a language foreign from his sentiments. My learned and ingenious friend, feels that his eloquence and ingenuity could be better applied, and more effectively exercised. The language and sentiments he was necessarily obliged to use, he conceived would be no recommendation to the patriot feelings of that learned and spirited seminary,* which it is his laudable ambition and wish to represent; and I am sure, when that gentleman came to examine into the defendant's case, he would have given up his brief with pleasure.—I have no such motive to decline speaking to evidence on the part of the plaintiff, and therefore I exercise my duty with pleasure, as his advocate; and however impossible it is in me, to display such splendid talents, as my friend Mr. Curran whose exertions every man must admire, yet when the topic to be discussed, is the liberty of the subject, he must be a slavish advocate indeed, whose energy does not arise, in proportion to the importance of the discussion, and calls out whatever talents God and Nature gave him.

In this case, it is only necessary to state the material facts proved, in order to convince an honest jury of their bounden duty. These facts alone will teach you to form a just judgment, whether Ireland is to participate in the liberty of that country to which she is now united; or to plunge back again into the chains and trammels of petty and despotic tyranny—that is the real question. If you, gentlemen of the jury, by your verdict, stamp a justification on the conduct of Major Sirr, Ireland is in bondage; but if your verdict marks that conduct as unjustifiable and illegal, Ireland will regain some traces of the British constitution; and the personal liberty of the subject may be secured and protected.

I know I now speak before an honest jury and a wise judge; the eyes of Ireland are fixed on the event of this trial; not as to Hevey or as to Sirr, but as to freedom, or as to slavery. For it is fully and unequivocally proved, that Mr. Hevey—a subject in the king's peace against whom no public charge remained—and to whom no public crime was then imputed—and against whom no warrant existed—or any pretence of legal detention—was dragged from a public room in the noon day as a common felon, and plunged into an infectious dungeon, to enforce a private apology, to a private subject, for a private insult, contrary to the spirit of the constitution, the law of the land, and the liberty of the country.

Gentlemen of the jury, could even the gliding shadow of distant liberty, light one moment on a country, where such an act should be held justifiable? It is not a common as-

sault, committed by an ordinary person, on an ordinary occasion, in the common occurrences of error or of violence—when the damage is measured by the private injury, and the wrongs of the individual are not identified with the general liberty of the country. It is not the case of a false imprisonment of a person in the lower order of life, by a person of the same description, where the hours of detention, measure the proportion of the injury; but it is a public and unwarrantable imprisonment of a respectable brewer of the city of Dublin, by major Sirr, to gratify the feelings of private passion, under the colour of public duty. The major is a gentleman whom you all know, to whose merit as a public officer, I as freely subscribe as any person who hears me. I admit he was active, indefatigable and effective, in preserving the peace of this city, at the time this country was in danger; but the rebellion that did in 1798 agitate this kingdom is now, past and this country is now in a state of tranquillity, and was fully so in 1801, when the defendant committed the offence before you. The defendant's counsel have dwelt on the past services of the defendant; but, gentlemen, it is a principle foreign and unknown to our constitution, that any person, on any authority, should claim a privilege to commit acts of injury and oppression on his fellow citizens, with impunity for past services; and for which he was so amply rewarded. It is unknown to the moderns it was unknown to the ancients. The last of the Horatii, though he had saved his country, was condemned for the death of his sister;—Manlius was flung from the Tarpeian Rock, though he defeated the designs of the Gauls, and saved the capitol of Rome. Yet why should we have recurrence to the pages of ancient history? we have a modern and recent example, and with which the major is better acquainted, than the story of the Horatii—I mean, Jemmy O'Brien! he also defeated the machinations of the Gauls, was the saviour of his country, and preserved our capitol, yet Jemmy received the reward of past services, for he was hanged in this city for murder. His past services could not protect him from the law; he died, and the law triumphed!! It is a weak and insolent defence to say, that the defendant's services should warrant his offences; it is absurd to argue, that because major Sirr knew and supported the law in 1798, he should be warranted in overturning his own fabric, and be at liberty to break through both law and constitution in 1801. Because he defended the constitution in time of war, is he to destroy it in time of peace? and because a rebellion once existed, is a tyranny to be erected on its ruins? This argument of the defendant's counsel, admits my client's case, because if the defendant's counsel had a better argument, they would certainly have used it. But they had none, the law failed them, justice failed them, and they were obliged to have

* The University of Dublin.

recourse to finesse, and endeavour to lead away the minds of the jury from the fact in issue, and impose upon their loyalty, when they could not mislead their reason. The defendant's counsel, as another argument, have had recourse to another finesse, equally weak, but more unwarrantable than the former; namely, that the plaintiff, Mr. Hevey, had been a rebel in 1798, and convicted, and sentenced to transportation; and that therefore a personal injury to him, by so meritorious a person as the defendant, should weigh little with the jury—Monstrous assertion!—Even if Mr. Hevey had been guilty, which I deny, such a doctrine is most vicious. God forbid that when a subject receives a pardon, and is restored to the bosom of his country, he should remain an outlawed slave in the midst of a free people; on the contrary, Mr. Hevey was as much under the protection of the law, as major Sirr; and both delicacy, and honour, and public policy, should rather have united in making a pardoned man forget that he had offended, than in making that pardoned offence, a pretence for his oppression. Such a pretence is an insult to the throne which pardoned, a charge against the lenity of the king, and a crime against the liberty of the subject—and of all the means which human ingenuity could devise, the most effectual means of perpetuating disaffection. If such a doctrine were permitted, pardon would only operate as prolonged punishment, and repeated injury excite to future disobedience; the letter of the law, and the spirit of the constitution, reprobate so wicked, so weak, and so mischievous a doctrine. But I deny the fact of Mr. Hevey's guilt: in times when it was enough to be suspected, to warrant punishment, Mr. Hevey had enemies: he belonged to the persecuted cast, and was charged of course, with high treason; the minds of all men were inflamed—rebellion raged—blood was familiar—animosity was implacable, and Mr. Hevey was sent to Kilkenny, to be tried by court-martial, for high treason; a reward was offered for any person who would give evidence against him; no creditable witness could be found—no high treason could be proved, yet he was sentenced to seven years transportation, on the *charge or suspicion* of high treason: though he must have suffered death, *if guilty*. The proceedings of the court-martial were laid before lord Cornwallis; he considered them, and under his sign manual gave the lie direct to the minutes of that court-martial; ordering Mr. Hevey to be discharged, in as much as it appeared, that he was not active in the rebellion; and let down the sentence easy, by directing Mr. Hevey to give security, which he immediately did. Mr. Hevey was discharged; he betook himself to his industry as a brewer, a man of wealth, and never had any species of offence laid to his charge, till the defendant treated him like a common felon in the Commercial coffee-room—and by such treatment, trampled

on the justice and humanity of the absent viceroy. Where then lies the guilt of Mr. Hevey?—where then lies the justification of major Sirr?—is it in the refuted minutes of the Kilkenny court-martial—or is it in counteracting the royal lenity, or viceregal justice?—No; the whole transaction is to be found in private passion, and personal animosity, working on an irritated mind, to commit a most unwarrantable injury.

Another part of the defence now made on the part of the defendant, is, that he did not show his protection, when demanded by major Sirr—this defence is as weak as the rest. Mr. Hevey had been three years resident in Dublin, as a brewer in public business, from the time of his pardon—known all over the city as a man of repute and punctuality, he was insulted—he was injured—he was inflamed—he was conscious of his own rectitude and safety—he had been pardoned, and he was not bound to answer major Sirr any question whatsoever. Major Sirr had no authority to arrest him; he had full authority to resist, and if major Sirr had fallen in the contest, where would have been the guilt of Hevey? Every false imprisonment is an assault; this was a false imprisonment—every man may resist an unwarrantable assault—and every man arrests another at his own peril. But it was said that major Sirr had a reasonable ground of suspicion of Mr. Hevey, and therefore detained him, till he could find the manner in which Hevey had been permitted to go at large; but that was not enough, even then, Mr. Sirr had *no authority* to commit him to prison, without first bringing him before *some magistrate*, and making a charge against him. A man who receives the benefit of his majesty's clemency, under the hand of the lord lieutenant, is as free as if he had never been found guilty; Mr. Hevey, it is true, was tried by a court-martial, but the lord lieutenant contradicted and reversed their sentence, and he gave a certificate of it, which no doubt is lodged in the proper office, to which office most particularly major Sirr had an official access, and must be considered as well acquainted with every pardon of that description, from the very nature of his occupation in Dublin and in the castle; therefore that was obviously a false pretence, the certificate of pardon is never lodged with the person pardoned, it remains in the office; it is never lodged in the man's hands. Mr. Hevey never saw his certificate of pardon, and therefore had it not to produce; for the certificate was never deposited with him, and the defendant's counsel endeavour to confound a certificate of pardon with a protection—a protection is always in the hands of the person protected, and the pardon in the office. Mr. Hevey never sought or got a protection, it was not necessary, nor would he have accepted one; because a protection is granted on a confession of guilt, which Mr. Hevey never made, nor ever will make. But the pardon was granted

on a ground of innocence; and Mr. Hevey desired Mr. Sirr, when asked by him for his certificate, to ask his betters for it—no doubt it was an abrupt answer—but Mr. Hevey was not bound to answer any question; and major Sirr's ferocity would not have induced Mr. Hevey to tell him as a favour—and is an abrupt answer to a town-major, a sufficient authority for three days imprisonment in a dungeon, part of it in irons?

Gentlemen of the jury; it is the boast, it is the happiness of the British constitution, that no man shall be wantonly deprived of his liberty—it is a great offence in a private individual, but in a public officer it is a high crime and misdemeanor, it is an abuse of a delegated authority without just cause, punishable by heavy fines and penalties. Is it now to be said, that Mr. Sirr acted under the orders of general Craig? there has been no evidence given of such orders; and the strongest presumption of the contrary must be entertained; what orders could warrant any man in 1801, to say to another who was in the king's peace, and under the law's protection, I knew you were a rebel in the year 1798, you have been since pardoned, but you deserve to be hanged? What orders could warrant the defendant to arrest a peaceable citizen, in a public coffee-room? What orders could warrant major Sirr to drag the plaintiff, like a felon through the public streets to his office in the castle, and pretending ignorance of his name and occupation, the major asked him his name, asked him his residence, as if they were his crimes; although it is in evidence that the major knew his name, and addressed him by it in the Commercial coffee-house, but pretended to forget it on the way, and then declared he would commit him to his old lodgings in the Provost. If the defendant knew his name and residence, he must have well known he had been discharged; if he did not know his name, what pretence had he for arresting him? In either case, he committed false imprisonment, with aggravating circumstances of the most unwarrantable (though certainly not unparalleled) description. That dark and deep inquisition, (the Provost prison), the very existence of which would banish every principle of national liberty, and every pretence of personal security from the people of Ireland, if it were suffered to remain longer the prison and the tomb of its inhabitants—I say that miserable dungeon has perhaps known many such scenes as this; from which the wretched sufferers have been only released by the will of that Almighty power, whose omnipotence it will yet be the lot of the defendant to experience.

Major Sandys appears to have been a considerable actor in this transaction; if the defendant has any defence, major Sandys must know, and surely will not divulge it unwillingly. He can if possible clear up the aspersions laid so heavily on his friend; major Sandys is now attending this court, and can

tell every thing—why does not the defendant produce him, to give evidence? he may be a most material and decisive evidence on the part of the defendant, if any one fact or word of the plaintiff's case is capable of being disproved—major Sandys hears me, he stands by me, yet is silent—I call on him in the name of justice—I call upon him in the name of friendship for his friend major Sirr, to come forward and give evidence—no; a sentence of my client's case cannot be contradicted, and major Sandys is silent; he was a witness to the whole transaction after Mr. Hevey's commitment. If then he will not come forward for his friend, every fact stands admitted—but his reluctance is easily accounted for also in another way—if major Sandys was produced, he would not state any thing untruly; and therefore must admit upon oath the whole of my client's case.—He could prove the injury that my client has sustained—he could prove the miseries he underwent in the dungeon he was plunged in—he could prove the irons which bound his limbs, and the cold flags which received his wearied body as a couch—he could prove the scanty meal of freezing water and of musty bread, which the charity of the prison first denied, and then allowed him as a feast—he could prove what number of infectious maladies ventilated the dungeon to which my client was confined; but these would be proofs for my client, and major Sandys is silent.

Permit me, my lord, and gentlemen of the jury, to lay before you another circumstance, not solely of a private nature, but which calls for the most serious consideration—a circumstance proving, beyond question, the most unconstitutional suppression of truth, the most daring and desperate assault upon the constitution, that ever came before a court of justice. The Habeas Corpus act forms the proud citadel of British liberty; it is that act which ensures personal security, and draws one of the first distinctions between an absolute and a limited monarchy. Without that act, every prison might become a grave, and every officer a tyrant—by that act every person who is confined may apply for his liberation to a judge; and if he does not appear legally confined, he is instantly set at liberty. The dreadful circumstances of the British empire at and previous to the rebellion, formed plausible grounds for the legislature partially to suspend the effect of that noble statute; and by several acts of parliament, it was, in fact, actually suspended, under certain restrictions; amongst these upon a writ of Habeas Corpus issuing, the prison keeper was enabled to return, that the prisoner was confined under a warrant of a military officer, for a state offence; and the judge was bound to admit it. But surely, if the dreadful necessity of the times warranted a partial and temporary suspension of that statute, and gave a confidential trust and authority into military hands, to supersede civil

authority and established law, it must be an offence of the highest nature to abuse that authority and trust, and convert that partial and temporary suspension into a private and a revengeful purpose; it is a high crime and misdemeanor, punishable by law more severely than I wish to mention—yet that crime was committed. On Mr. Hevey's arrest, a writ of Habeas Corpus issued, to bring him before a judge, in order to be liberated—before a judge, whose benevolent mind, and constitutional principles, were measured by the number of his decisions—and at whose tomb the law and the constitution are struggling which shall be the deepest mourner—Mr. Justice Chamberlaine. But that learned judge was defrauded of his function; a return was made to that writ of Habeas Corpus, that Mr. Hevey was confined under a warrant of general Craig, for high treason. A false return—a return not the truth; he was not confined under such warrant—no such warrant appears to have issued—no such offence appears to have been committed—such return was an abuse of authority—it was a fraud upon the learned judge—it was an unconstitutional extension of an unconstitutional power—it was a great crime, and merited a great punishment. The arrest was illegal—the return was illegal—and that false return having been effectual, proves beyond contradiction, that in the person of my client, not only the individual but the general liberty of the Irish people was implicated and involved.

General Craig has been subpoenaed here, by my client, to prove the falsity of that return; he has been called and called, but he has not appeared; he must have proved that the whole was a fabrication, the warrant has not been attempted to be produced in evidence; and although the negative is incapable of *sine voce* proof, without the personal attendance of general Craig; and the general not appearing to do justice, you gentlemen, are warranted in determining the whole to be a total falsehood, and that no such warrant issued—highly aggravated too, by the only person who could give decisive evidence as to that fact being at the plaintiff's back, and restrained for giving such evidence. If such a warrant had issued, it would have been the defendant's justification; but he has not justified, nor proved it, nor accounted why he did not; nor has he produced major Sandys who made that return, though he is sitting by; and therefore the defendant unequivocally admits, that there was not a charge to warrant Mr. Hevey's confinement. But why should I dwell on negative descriptions however strong or decisive? there is positive proof to establish these facts, for the witness who has told you that Mr. Hevey was detained in prison, says it was because he would not make an apology to Mr. Sirr as an individual, for a personal offence to him in the Commercial coffee-room. No man in this land is suffered by the law to gratify private ma-

lice, or to convert his own private injury into the instruments of individual oppression.

Lord *Kilwarden*.—Does it appear who made the return?

Mr. *Barrington*.—My lord, major Sandys made it, who appears through the whole to have been the confidential, and acting instrument of major Sirr; the witness said he saw a copy of it, but not the original. But it appears that Mr. Sandys was the provost marshal, and the friend of Mr. Sirr, and made the return, or had it made; the witness said he saw the plaintiff in custody, in the Provost; he said that prison was appropriated for the custody of persons charged with high treason; that he had a conversation with major Sandys then, who required an apology from Mr. Hevey to Mr. Sirr, as the ransom of his liberation. On Mr. Hevey's arrest by major Sirr, he was brought through the public streets to the castle; Mr. Sirr asked the plaintiff his name, as if he were ignorant of that name, though he had called him by it in the Commercial buildings; and he made out his committal to the prison of the Provost, where major Sandys presided with despotic authority. Could he have brought any charge of high treason against him, such charge would have been stated in the committal. It was proved, that Mr. Sandys, in person, suggested to plaintiff to make an apology to Mr. Sirr, and that he would be liberated; that circumstance proved the offence beyond controverting:—if Mr. Hevey was confined for high treason or any public offence, by what law, or by what authority, could major Sandys liberate him on an apology to major Sirr? is major Sirr the crown, is major Sirr the constitution, or is major Sirr the law? does he unite in his person, the legislative and executive powers?—if he does not, by what new revolution is a private apology to him, a sufficient authority to discharge a public offender? If then Mr. Hevey was confined for high treason, Mr. Sandys should forfeit his life by law, for suffering him at large without authority; if on the other hand, Mr. Hevey was not, confined for any public offence, major Sirr shall forfeit his property for confining him—thus speaks the law; it protects you, gentlemen of the jury, do you protect it.

Gentlemen of the jury, the damages laid in the declaration, even if you find the full amount of them, are inadequate; you will consider the hardships inflicted on the plaintiff, when in the Provost prison; till the story of my client became public, I could not have believed it possible, that after all pretence of insurrection had ceased—after having been told that Ireland would have British liberty, when she became united to Britain—I could not have believed it possible, that there could have existed in the midst of what is called a free city, a deep, dark, loathsome, and infectious dungeon, boasting all the qualities of bastilles and inquisitions—kept by an individual—into which his majesty's peaceable

subjects could be plunged without crime; and in which they could be detained, by false, and fabricated returns of the king's writs, under pretence of state offences. I could not have believed it possible that Mr. Hevey could have been so confined, unless the fact had been proved before you on oath, beyond a doubt—yet the fact is so; and whatever my client has suffered, he has the gratifying consolation of reflecting, that his disclosure of this transaction, will inform his majesty's government of the dangerous abuse of their authority, which I have no doubt they not only never knew, or countenanced, but certainly will punish; and have now a glorious opportunity of showing this nation, that no pretence of past services can warrant a stab to the liberty of the country. My client may by this day's disclosure, give a weapon to the law, to defend the constitution; and his fetters may secure the liberty of the subject. But as to damages, recur to the circumstances of his confinement—the gates of no common prison closed upon him—a loathsome, close, and narrow dungeon, was his lodging; disease and misery, were the inhabitants of the room in which he was immured—the first object which struck the witness, was a wretch in the midst of the room urged by disorder and confinement, to the most disgusting act of a human creature, every sense alike affected. Another he saw half dressed in a ragged shirt, discoloured by the disease of its owner. A third, with a small book reading, as he conceived, the last services to a dead, or dying captive. He looked no more, but hastily withdrew, nor could even the voice of friendship tempt him to enter farther into a place where contagion and misery seemed the ruling powers. Yet this was the prison chosen for my client, because he would not apologize to a subject. There were many public prisons in Dublin, where a person of his description would be suitably accommodated; where cleanliness and humanity are strictly attended to; to these he was not taken, or before any public officer whatsoever. The keepers of these prisons would not have detained him without some legal committal, for some certain crime; and this fully accounts for the place to which his person was consigned—secret and despotic. Will you by your verdict say, that Mr. Hevey sustained there, no injury from such treatment? When Mr. Sirr thought proper, without just cause, or legal authority, to seize Mr. Hevey by the collar, in the public coffee-room of the Commercial-buildings, and drag him to his office, or rather his inquisition in the Castle-yard, he asked for his protection; Mr. Hevey had no protection; but he had a better safeguard—he had a pardon; protections were only granted, where a culprit had confessed his crimes; but pardons were granted, where improper convictions or sentences had passed; and when innocence, and not guilt, after-

wards appeared. A protection was granted on a prior acknowledgment of guilt; a pardon is founded on a subsequent proof of innocence. There rested the distinction; my client had no protection, for he was not guilty, but he had a pardon; for lord Cornwallis had declared the impropriety of his conviction. If Mr. Sirr thought he had a right to inquire why my client appeared at large, he should have taken Mr. Hevey before a magistrate of this metropolis, and have had the matter of fact properly and legally investigated. Do you, gentlemen of the jury, know so little of the world as not to perceive, that many persons who were in 1798 charged with rebellious practices, are not now useful members of society, under the protection of the law, and the safeguard of the constitution? By what new code of jurisprudence then, would major Sirr be authorized, in defiance of both, to invade the liberty of the subject, and despise the king's pardon? is his authority created, to keep alive the dying embers of disaffection, to make men believe they are not protected by the law, and thereby excite to new and ruinous projects for redress, and emancipation—and to excite the contradictory phenomenon of a petty tyranny, existing within a free constitution, and a peace-officer taking the most effectual steps to disturb the growing tranquillity of the country? Major Sirr, and major Sandys appear correspondent and connected in this transaction; my client handed from one to the other, they appear equally to understand each other's meanings, and to forward each other's objects—the one had seized, the other had detained my client, neither of them had authority for doing so, but both of them had necessity for some justification; they worried their imagination to find one; Mr. Hevey had been convicted, but that did not justify them, for lord Cornwallis proved his innocence—Mr. Hevey was of a once proscribed sect, but that proscription was at an end, and no justification could be found there; even fancy was in vain applied to, to find his crime and their justification; but even fancy failed them; and at length his crime was ascribed to be, that he had retorted insult, by insult, and had presumed to say, that major Sirr had told a falsehood,—and this was conceived to be a capital offence; because if it was not an offence against the state, the Provost prison was not adapted to his confinement; and major Sandys had no right to detain him;—the two majors, like Castor and Pollux, felt the pleasures of mutual support, and the necessity of mutual assistance, and when one of the demi-gods was offended, both the demi-gods punished. My client for three long days and nights felt the omnipotence of their power, and the punishment of his presumption; they both were culpable—both acted. Is that a reason he is not to be compensated in damages by either? to say so, would be a new species of effrontery to impose upon a just jury, and dishonour the name

of justice. There is a circumstance mentioned by one of the witnesses, which merits observation, and shows the dreadful dungeon into which my client was cast for this offence to major Sirr; damages should be given, proportioned to the injury the complainant receives, but how will you proportion the damages, when you recollect that this witness said he went to Mr. Hevey's room in the Provost prison, and there saw a man read out of a small book, which he took to be a book of prayer, and as he believed upon his oath, the office of religion for the dead, or dying man?—Infection and disease had opportunely made a vacancy for my client to lie down on the same bed which was then yielding up its morbid inhabitant to the grave. In such a dismal dungeon was my unfortunate client confined without legal authority, for the space of three days, in order to force from his reluctant lips—not a confession of guilt—not an impeachment of accomplices—not a discovery of insurrections, or development of high treasons—No; it was only to wring from his lips, an humble personal apology to Mr. Sirr! And under pretence of that apology, to lay some ground for a future justification; the plaintiff refused to sign any apology; but by the entreaties of his friends, the consideration of his trade, his children, his health, probably his existence, an apology was extorted, without having committed an offence; and that apology dictated by major Sandys, for his friend major Sirr, to gratify the offended honour of the latter, is probably the first instance in any country remote from slavery, where so outrageous and wanton an oppression could be fathered even for a moment on a government, whose name and authority was traduced by the transaction. That apology so signed by him, has been read in court this day: you have heard it, gentlemen of the jury,—was the refusal to sign such an apology, a justification for such an outrage? let me ask you as guardians of public freedom, is the liberty of the subject, is the liberty of the citizens of Dublin, to be thus trampled upon with impunity? What man's person, or property, or character, or life is one moment secure, if such transactions are not punished by most ample and exemplary damages?

My learned friend, Mr. Fletcher, has thought proper to say, that Mr. Sirr had authority to do as he has done where he had a reasonable cause of suspicion. In certain cases, where a magistrate has a just ground of suspicion, and that fact or well-grounded suspicion of it, verified upon oath, and in some cases without oath, he may cause that man to be apprehended and brought before himself, as a magistrate of the place, where the man is taken; but in this case, Mr. Sirr took upon himself, not being a magistrate of the city of Dublin, to bring Mr. Hevey to his (Mr. Sirr's) own private office; and there, on writing down his name and place of residence, as if these were capital offences, without any other apparent

cause whatsoever, without any person coming forward, or called upon to come forward and accuse him, without any admission or confession to warrant it, major Sirr wrote a committal, committed my client to a military guard, and plunged him into a loathsome, scandalous, and infectious dungeon—not to abide the sentence of the law, but to exemplify a breach of it by his oppressor. Mr. Sirr had not any authority to confine any man, but under some legal warrant; and if he seized my client in such a manner, and confined him on suspicion some days, yet he did it at his own peril, and must abide the consequences; otherwise any magistrate or public officer under pretence of suspicion, might indulge the cruellest tyranny with impunity. I will suppose for argument's sake, my client was charged with even so great an offence as murder, or even high treason; that he had taken his trial for the same, and that he was acquitted and discharged by due course of law, or had been convicted and pardoned by the king, upon a satisfaction that the verdict was unjust and illegal, had the defendant a right afterwards to take up that same man, knowing these facts (and it is clear major Sirr from his situation and office, and the plaintiff's residence in Dublin, as a trader for three years, must have known his situation); and to tell him, true you were on your trial, but I am not satisfied how you are at large, and therefore I will put you in prison, till you make me a written apology, for presuming to meet me in a public coffee-house!—that is the true statement of this case. Gentlemen of the jury, if you regard liberty, or value security, you must mark, strongly mark that transaction.

I am far from supposing that the government of the country had any share in the specific acts of those who may be employed under them, in the discharge of particular duties, much less, any knowledge of this transaction. But I am clear that the government, though not responsible by law for individual offences, committed without their knowledge, are by principles of common justice bound to check every excessive exercise of delegated authority, and I have no doubt they will do so. My learned friend, Mr. Fletcher, has also said, that the plaintiff insulted the defendant, who is a magistrate, in the execution of his office.

Lord Kilwarden.—There has not been a tittle of evidence given, to show that Mr. Sirr is a magistrate.

Mr. Barrington.—It lay upon the defendant to prove, first, that he was a magistrate; and next, that he was acting in the execution of his office; and thirdly, that he was insulted;—but the contrary of all these three parts has been proved. First, it has appeared, that he was not a magistrate of the city; next, it has appeared, that he was not acting in the execution of his office; and thirdly, it has appeared that he himself, and

not the plaintiff, gave the first insult—so that every ground of justification, on these three heads, appears false and fallacious. But even suppose he was a magistrate of the city, and was insulted in the execution of his office, no magistrate could by law, commit him to a Bastile or an Inquisition, without bail or mainprize. A magistrate would be bound to commit him to a public prison, on a legal committal, and bail him when required—it is the unquestionable right of British or Irish subjects, to be committed with justice, confined with humanity, and bailed according to law. Here my client was committed without reason—confined with severity—and detained without bail—every principle and practice of the law was broken in his person—and every principle of discreet policy and constitutional protection, violated by his imprisonment.

My learned friend, Mr. Fletcher, has thought proper to state, with a great deal of talent and ingenuity, many facts not proved in the case; and he has humourously told you, that probably a paragraph will appear in the newspaper, that on such a day, a remarkable trial was had in the Court of King's Bench, wherein Mr. Hevey was plaintiff, and Major Sirr, a most meritorious gentleman, was defendant, when the counsel for the plaintiff, made a most eloquent statement, the jury without hesitation, found a verdict for the defendant, and fully justified the major for his active and useful services.—But I am rather of a different opinion from that of the learned counsel; for I rather think it may appear in the newspapers of tomorrow, that on this trial, the jury on hearing decisive evidence of a most wanton and illegal imprisonment by defendant; and a plain and true statement of facts, by plaintiff's counsel, notwithstanding the great exertion of defendant's counsel, who most candidly used every art of sophistry in reasoning, and equivocation in fact, to mislead the jury and puzzle themselves; the jury considering, that the life, character, and property of every man was involved in the question, instantly brought in their verdict for the plaintiff, with 5,000*l.* damages, being the full amount of the damages laid in the plaintiff's declaration; and thereby evinced the detestation of an honest and respectable jury, to every outrage against society, and a determination to prevent such conduct in public officers in future.—This I think is the more likely paragraph of the two, and is certainly most essential to the safety and honour of the gentlemen of the jury. I doubt not that you will take all these impressive facts into your consideration, as guardians of the society and peace of your country; and that you will have a pride in finding such a verdict, as will show the world, that we live yet in a land of liberty and freedom.

Lord Kilwarden charged the jury to the following effect:—Commenting on the preju-

ices incident to the infirm state of the human mind, his lordship said it was a weakness so universal and so interwoven in the nature of man, that judges can no more boast of being entirely exempt from them than other men. It was however their peculiar duty to guard against any impressions by which justice might eventually be perverted, and the subject injured. It was equally incumbent on juries to exert the utmost vigilance and care of which they are capable, to keep their judgments free from any bias of which they might be susceptible from the zeal or abilities of counsel, whose duty it was to take advantage of any casual occurrence, which they might conceive led to establish the cause of their respective clients. Much eloquent declamation had been expended by gentlemen on both sides, on tyranny, on the coercion of the government, on the decadence of our freedom, on the wisdom of the constitution, and the liberty of the people. To these the merits of major Sirr as a public officer, and the supposed delinquency of the plaintiff on a former occasion, had been superadded. It was however the duty of the jury to discharge every idea of this nature from their consideration, and confine themselves to that narrow point within which the case will certainly be found to rest, when deprived of all those extraneous circumstances in which it had been involved. The case is a very simple one between two private individuals, John Hevey and Charles Henry Sirr; as such alone were they to consider it; and try what reparation should be made to the plaintiff for the injury he alleges to have sustained, if they shall believe from the course of the evidence before them that he had sustained any.

The first object of their consideration, must be to examine into the facts respecting the conduct of major Sirr to the plaintiff, at the Commercial coffee-house, and fairly discriminate between the caption of the plaintiff, and the act of confining him in the Provost. It was used in argument by counsel, that any man has authority to apprehend a suspected felon, and make him account for himself. That principle cannot be controverted; but it stands only with this reservation, that the person doing so must act at his own peril, and abide all legal consequences if he cannot substantiate his charge. However, although an indifferent man, that is one not invested with magisterial authority, might apprehend a suspected felon, yet he has no authority to convey him to prison without a magistrate's committal; therefore major Sirr not being a magistrate for the city of Dublin, stands certainly reprehensible in law for the particular fact of false imprisonment, as far as the evidence goes. The next question for the consideration of the jury, his lordship said, must arise from the intention and motives by which major Sirr was actuated in his conduct to the plaintiff. If any evidence occurred to sup-

port one part of Mr. Curran's statement, which was, that the defendant was instigated by a malicious and vindictive spirit, in consequence of the depositions which the plaintiff made, to discredit the oath of M'Cann on the trial of Maguire, his lordship asserted, that as to the quantum of damages, he would no more hesitate at 5,000*l.* at which they were laid, than he should at five-pence; but as no attempt even had been made to support that allegation by any species of evidence, the jury must avoid taking the principle imputed to major Sirr into consideration, and examine into motives as well as facts, by a fair deduction from testimony alone. It appeared to his lordship that major Sirr was merely actuated by a sudden impulse of passion in seizing on Hevey, in consequence of the abusive language received from him; nor did he perceive any violent aggression on the part of Sirr to provoke such language. Whatever opinion he might have entertained of the conduct or loyalty of the plaintiff, it was evidently not his purpose at that time publicly to upbraid him with it, by a conversation held in a confidential manner, and in a low voice with the witness Hall. His lordship did not offer this observation in vindication of the general conduct of the defendant,—but merely to exculpate him as he conceived he merited, from the charge of malice or revenge of which no evidence had been adduced. At the same time it was to be regretted, that major Sirr, who was certainly a very active instrument in tranquillizing the country, while in a state of alarming perturbation, should not have had sufficient discretion and command of mind during the exercise of a temporary authority, which nothing but necessity alone could warrant, to exert that authority with mildness, even with reluctance under the influence of public duty, and for the public good alone, without any regard to personal feelings or irritated passions.

The occasions which, under Providence, seldom occur, to compel governments to transcend the fixed boundaries of the subject's freedom, under our happy constitution, are still of that momentous and awful description, as to call for acts of military coercion; and to these seasonable acts have we been indebted for the restoration of those very laws which in times of tranquillity, are so forcible and energetic in prohibiting the wanton intrusion of military power. It is in fact to the principle which so many have been pleased to call tyranny, that we are indebted for the preservation of that liberty, which in necessary instances must have been violated, in order to perpetuate its effects, and render the happiness of a people permanent. Every man invested with a temporary authority beyond the laws, should therefore be made acquainted with the necessity which prompted it, and regulate his conduct by a firm undeviating regard to that duty which necessity imposes, from considerations of the public

safety alone; so that if major Sirr instigated as he believed, by a momentary irritation, had stretched his authority in making the caption, and committing the plaintiff, so soon as his emotions had subsided, he should have run with impetuosity to liberate him. But instead of that he temporized, and as appeared to his lordship, trifled with the plaintiff in the message he sent him, respecting an order to major Sandys for his release, with the latter's answer about his detention on a general officer's warrant, which warrant, Sirr, his lordship conceived, must have had cognisance of, before he sent Hevey an ambiguous or fallacious message.

It was strongly urged by the defendant's counsel, that Hevey carried about him the stigma and suspicion annexed to the character of a condemned criminal, in consequence of the sentence of a court-martial, before whom he was tried in Kilkenny; and that under these circumstances the conduct of the defendant towards him could be vindicated and supported. To such argument lord Cornwallis's pardon is a direct and unquestionable reply. That pardon had effectually wiped out the stain of the plaintiff's former delinquency, notwithstanding the weighty recognizances under which he stood for the preservation of the peace; nor should his former errors have been visited on him in any point of coercion, or even imputation, until he was guilty of some act by which those recognizances might have become forfeited.

The next and only question for the consideration of the jury which his lordship urged, regarded the principle of liberal or nominal damages. If with his lordship the jury could perceive no trait of malice or revenge in the conduct of Sirr, it was merely their duty to appreciate damages for the plaintiff, according to the inconvenience he was subject to, or the injury he had actually sustained. If on the other hand, they found reason to believe, that the plaintiff in resisting those interrogatories which major Sirr had put to him, immediately after conveying him to the Provost, respecting a protection or some authority for being at large, had a view to provoke confinement, in order to lay a foundation for these proceedings; it should then be their duty to give none but damages merely nominal. These were the observations which occurred as necessary for his lordship to deliver, which he recommended to the jury to weigh and compare, with perhaps many more cogent ones of their own; at the same time not forgetting to discharge their minds from every species of intemperate feeling or indignation, which different relations and comments on the same occurrence, might possibly have contributed to excite in them.

The jury retired, and shortly returned with a verdict for the plaintiff, 150*l.* damages, with costs.

648. Proceedings on the Trial of an Indictment against JOSEPH WALL, Esq., sometime Governor of Goree in Africa, for the Murder of BENJAMIN ARMSTRONG; tried before the Court holden under a Special Commission at the Sessions House in the Old Bailey on the 20th day of January: 42 GEORGE III. A. D. 1802.*

Sessions House, Old Bailey, January 20, 1802.

PRESENT,

The Right Honourable Sir *Archibald Mac Donald*, lord chief baron of the court of Exchequer;

The Honourable Sir *Soulden Lawrence*, one of the justices of the court of King's-bench;

The Honourable Sir *Giles Rooke*, one of the justices of the court of Common Pleas.

The Indictment was opened by Mr. *Abbott* [afterwards lord chief justice of the court of King's-bench.]

Prisoner.—My lord, I cannot hear in this place; I hope your lordship will permit me to sit near my counsel.

Lord Chief Baron *Macdonald*.—It is perfectly impossible; there is a regular place appointed by law,—I can make no invidious distinctions.†

Mr. *Attorney General* [sir Edward Law, afterwards lord Ellenborough and lord chief justice of the court of King's-bench].—May it please your Lordships; Gentlemen of the Jury; Upon hearing, from the indictment which has been read to you, that the offence, respecting which you are now charged to inquire, is an offence committed so long ago as the year 1782, it may naturally occur to you to ask, why this offence is *now*, at so late a period, brought before a jury for trial. In the first place, gentlemen, I will take the liberty of assuring you, that it is by no means a matter which infers blame either upon those who now are, or upon those who at any former periods were concerned in the steps which led to this prosecution, that the subject has not been sooner brought to its proper judicial audit and determination. The prisoner must take to himself the blame, and the inconvenience also (if any inconvenience attends him on that account, which I verily believe there does not), arising from so late a trial; inasmuch as he thought fit, at a much earlier time, when this matter was put in its regular course towards trial, and when he was actually in custody under a criminal charge

for this offence, to withdraw himself from the justice of his country. And now, at this the earliest period, since his return, at which he could be conveniently tried, he is brought to this bar, through the medium of such necessary preliminary steps as the law requires to be taken on the occasion; that is, through the medium of a special commission, duly issued by the privy council, who are empowered, according to the provisions of the statute of the 33rd Henry 8, chap. 23, to issue a commission for the trial of the offence of murder committed beyond the seas. And, gentlemen, the question for you to try upon this occasion is, whether the prisoner at the bar is guilty of the crime of murder. There is no other description or quality of offence, respecting which you are charged to inquire;—this is not a case in which the party can be convicted or considered as guilty of manslaughter—the question for you to try is, whether he is guilty of murder, or of justifiable homicide.

Gentlemen, the crime imputed to the prisoner I have stated to you to be murder: the prisoner is charged, upon the present indictment, with the murder of a person of the name of Benjamin Armstrong, who was a soldier and serjeant in the garrison at Goree, of which the prisoner at the bar was, at the time of Armstrong's death, the commandant and governor. The circumstances that led to the punishment, which was the cause of the death of this person, it will be for me presently to state to you; and it will be for me, after I have so done, to discuss, in some manner, that which is the probable, and which is not only the probable, but which, from circumstances antecedent, I know to be the actual ground of defence which the prisoner will rely upon before you, for his deliverance this day.

Gentlemen, Mr. Wall was, in the year 1782, commandant of the garrison of Goree, which is an island upon the coast of Africa; he had under him, in command there, a captain Lacy, who afterwards succeeded him in the command of that garrison; he had under him likewise a lieutenant Fall, a lieutenant O'Shanley, an ensign Ford, and ensign Deering; these, with major Phipps, an officer of artillery, were, I believe, all the military offi-

* Now first published from the short-hand notes of Mr. Gurney.

† See Horne Tooke's case, ante Vol. 25, p. 7.

cers then at the place; at least, it does not occur to me at present to mention any other military officer as then being there.

The circumstances of the case now before us you will recollect arose in the year 1782;—the 10th of July 1782, is the time when that death was occasioned, which is imputed to the prisoner at the bar as murder. The prisoner returned to this country in the month of August, 1782: he was apprehended for this offence in the month of March, 1784, under a warrant from the privy council. You will bear in mind, gentlemen, that most of the persons who, in respect of their local and official situations, were the most material witnesses to establish his innocence—if innocent he be—were living, and within the reach of process from the criminal courts of this country, and might have been then brought forward to establish his vindication, if by such evidence he felt that he could have been vindicated from the charge now under your consideration.

In the year 1782, this gentleman had a garrison under his command, as I have stated, in which there were the several officers, whose names and whose commissions I have already mentioned:—I believe, the whole military force under his command consisted of at least one hundred and forty or one hundred and fifty men;—the garrison had been, for some time prior to the period at which he announced, in public orders, that he was about to depart from the garrison (and which departure was so announced as immediately about to take place, on the 11th of July), put under short allowance in point of provisions. That measure was, I presume, adopted from fair and proper reasons of prudence and probable necessity.—The men who had been put under such short allowance, and who were thus restricted, in point of supply, in the articles of usual and necessary consumption, with a view to general convenience and the eventual safety of the garrison, and in order merely that the existing stock of provisions might last out till a farther supply might arrive, were at all times very properly allowed some compensation of a pecuniary kind, on account of their reduced allowance in point of actual provisions.—The gentleman at the bar had announced his departure, as I stated before, for the 11th of July; there was also about to depart, at the same time with him, for England, a person of the name of Deering, the paymaster of the garrison. In the hands of that person were, of course, these stoppages; and these stoppages were usually commuted with the men, and compensation made to them on account thereof either in money or in that which was, for the purpose of supplying their immediate necessities, equivalent to money, that is to say, in articles of convenient barter and truck at that place. When ensign Deering the paymaster, upon whom the garrison had demands for their short provisions, was so about to depart, the

garrison was of course anxious that their account with him might be settled; and as the period of his departure drew so near, it will be given you in evidence, that a considerable number of the soldiers who had demands of this kind had resorted to the house where the paymaster lived, in order to obtain the payment of them.—For what reason governor Wall mixed himself in the consideration of these short allowances,—what personal reasons he might have, to interpose himself between these men and the application for a settlement and adjustment of the claims made by them on this account,—I am not apprised; at least I shall not suggest any to you.—The application was made, as I have stated, by those persons in considerable numbers;—they resorted to the house of Mr. Deering, and were desirous of having satisfaction for their pay, before he should leave the island, which was to be on the day following. After that period, a vast ocean would separate them from their debtor, and considering the precariousness of human life,—and particularly in that unhealthy settlement,—if they did not press their demand at that period, it is possible they might not be in a situation afterwards to urge it with any beneficial effect to themselves.

Upon their coming, in a considerable number,—as you will have it in evidence,—towards the house of the paymaster, and when in doing so they passed by the governor's house (who lived in the way to the paymaster's), and were going on to the paymaster's, it appears that governor Wall came out, and with language of some anger, reprehended the men for resorting to the house of the paymaster upon this occasion, and ordered them, with some menaces of punishment, to go away; the men, as it is stated to me, and as I shall lay it before you in evidence, retired dutifully upon that admonition. About an hour and a half afterwards, several persons came—whether they were the same who came before I know not—but one of them was the deceased Armstrong, whose death, and the causes of whose death, are alone now in question before you.—I say *alone*, for I would wish and desire you, to lay out of your consideration any circumstances which point at the supposed death of any other person; if you happened to be in court, and heard any indictments read, upon any former occasion, which were applicable to the deaths of any other persons, I request you to lay that matter wholly out of your attention; for we are to confine our attention merely to the circumstances and cause of the death of Armstrong, and no other circumstances will be gone into, but such as are immediately connected in point of fact with the death of that person. If, indeed, subsequent transactions, connecting and inseparably mixing themselves with matters which respect the deaths of other persons, should necessarily, in point of fact, make a part of our proof in respect to the

charge now before you, these facts are not shut out from us in point of legal use and application, because they may conduct to, or in themselves make a part of the proof of any other substantive crime jointly with the present; but no substantive crime, except the one charged upon the indictment, and which you are sworn to try, can come immediately and properly under your consideration, for the purpose of affecting the prisoner upon this occasion.

Gentlemen, I have stated the appearance of the soldiers, upon their first application.—Upon a second application to the paymaster for their pay, Armstrong (the deceased) appeared with the persons who were making that application;—governor Wall came out to them again from his house; and I do not think that, upon this occasion, he used the language of menace which he did before, but he spoke to the deceased Armstrong; and Armstrong—as it will be given you in evidence, by a person who had the best means of knowing and seeing all that passed, being the orderly serjeant immediately attendant upon the person of the governor the whole of that day—this person of the name of Armstrong, so far from behaving in any undutiful and disrespectful manner, or from manifesting any disregard to the command of his lawful superior, pulled off his hat and bowed with all proper deference to him, and then, without entering into any contest as to the right to make the application they were about to make, having merely stated that they came there in order to settle with the paymaster, upon receiving an intimation from the governor that what they were doing ought not to be done, he respectfully retired; and, from that period (if there be truth in the evidence I have to lay before you), till the period of the punishment, which was afterwards on that day inflicted upon Armstrong, and which punishment is charged to have been the cause of his death, there did not exist in the place the least symptom of tumult, discontent, riot, disorder, or any thing that bore the appearance of mutiny or disobedience to the lawful commands of a military superior.

Gentlemen, I am now adverting to this, because I think it right to anticipate that which I understand (not upon the ground of loose rumour, to which it would not become me to advert, but upon the declaration of the prisoner himself) to be the ground of his defence, viz. *the existence of a mutiny necessary to be repressed by such punishment as was inflicted on Armstrong*. I will not merely discuss and canvas, but would rather, to a considerable degree, admit the validity of that excuse, if the foundation for it did exist in point of fact; and if mutiny or tumultuous disobedience by a military man to his military superior is not now brought forward, or has not been brought forward at any other time as a pretence, and in order to serve as a cover and cloak for abused power, and the malicious

perversion of legitimate authority,—if there did exist, in point of fact, a mutiny within his majesty's garrison, which it required the strong arm of power to suppress, if it was a mutiny so enormous in its size, so dangerous in its probable and immediate consequences, as to supersede the ordinary forms of trial for that or such like offences, I do not stand here to require of you,—God forbid I should,—that you should conceive this or any other man similarly circumstanced, as being other than not only an innocent but even a meritorious man, who uses the effective powers with which his situation arms him, or which he has it within his reach to command and use, for the discharge of the trust, and the protection of the interests committed to him. But, gentlemen, if you shall find that there was no mutiny; if mutiny exists only in pretence, and has been used as a colour to enable this person to inflict unauthorized punishment upon the unfortunate object of his vengeance; then, indeed, instead of standing before you as a person innocent or meritorious, he stands before you charged with the highest crime, of which a person invested with authority can be guilty,—with having abused the great trusts and authority of his situation, for the oppression of one of his majesty's subjects, for whose protection, amongst other purposes, that authority was originally given.

The application for pay was made in the morning, by the soldiers to the paymaster, who was about to depart; there was an interval, respecting which it will certainly be incumbent upon governor Wall to give some account in evidence, and to show, that it did not entirely pass in tranquillity and quiet. Why, if there was any thing that required investigation, was it not filled up and occupied, as far as it might be, by some forms of trial?—Upon this subject there is an entire silence.—We hear nothing with respect to these men, or to any transaction in the island in which governor Wall is concerned, till the evening or towards the evening of that day.—Somewhere towards six o'clock, I think, it will be in evidence, that the drum beat what they call 'the long roll,' which was for calling the soldiers upon the parade. The orderly serjeant, who attended governor Wall, will state to you that this was beat by governor Wall's direction; the men, who immediately attended, were ordered to fall into their ranks as they were, unarmed, several in their jackets, as they happened to be, without waiting for that preparation in point of dress which would have fitted them for their ordinary appearance upon the parade upon any other occasion; they were then ordered to form a circle upon the parade; captain Lacy, lieutenant Fall, ensign Ford, and lieutenant O'Shanley being present; the circle being formed, the witnesses will state that some conversation passed, in their presence, between the officers; there being, I think, at that same time, brought forward upon the parade a gun-carriage, and

persons attending to perform the office which was presently afterwards performed by them.

After a short communication (a few words only having passed) between the governor and the officers assembled there, whom I have already mentioned, this man, Armstrong, was ordered by governor Wall to be stripped;—he was accordingly stripped, and was then tied to the gun-carriage;—black men came forward—not the persons who usually apply military punishment, but black men came forward—and began to inflict the punishment which was ordered; they changed about; each took his turn; each, I think, inflicting twenty-five lashes, TILL THE NUMBER OF EIGHT HUNDRED LASHES HAD BEEN COMPLETELY INFLICTED UPON THE BODY OF THIS UNFORTUNATE PERSON. Punishments of this sort are usually inflicted by drummers, or other soldiers of the regiment; it was, in this instance, you observe, inflicted by black men ordered to attend there for that purpose; and this punishment was not inflicted with the usual instrument with which military punishments are inflicted, which is a cat o' nine tails, formed, as I understand, of a log line of about one eighth of an inch in thickness, BUT WITH A ROPE OF ONE INCH IN DIAMETER; one of the very ropes used on the occasion, or one at least exactly resembling it, but I believe one of the ropes themselves (and from circumstances I have little reason to doubt its identity) will be exhibited to you in evidence.—During the time of inflicting this punishment, I am instructed it will be proved to you, that governor Wall urged these black men to the performance of their task, in language which it will be enough for you to hear once from the mouths of the witnesses;—very harsh expressions are stated to have been used by him, some which I would gladly be spared the mention of;—that he several times called out “cut him to the heart; cut him to the liver!”—that Armstrong begged for mercy; and that governor Wall then said, that the sickly season was coming on, and that this punishment would do for him;—that after receiving a great number of lashes, Armstrong was conducted to the hospital; that he was in a situation which made it probable that his death would be the consequence of what he had suffered.—Accordingly, at periods sometime subsequent, you will hear that he made declarations, which if they appear to be (and which will be a question for the judgment of their lordships) declarations made under the expectation and belief of an immediately impending dissolution, and with that solemn consciousness of duty which belongs to that awful situation—a situation which places the mind under sanctions at least tantamount, in point of obligation to tell the truth, to what are impressed upon it by the solemnity of a judicial oath—you will in that case hear, as proceeding from this man, a declaration that he expected his death, and that he had been punished without any form of trial, and with-

out having committed any offence whatever; this evidence, under the circumstances I have supposed, will be undoubtedly competent; and if it comes under those views, I shall be able to lay it before you.

After this punishment had been inflicted upon Armstrong,—I will not, however, travel into circumstances which relate to any other person; I close the business of the punishment, as far as respects governor Wall, here.—On the next day, as he had announced his intention to do, governor Wall, together with ensign Deering, the paymaster, an officer who is not now living, and major Phipps, took his departure for England.

Gentlemen, if it be as this person will allege to you to day, and endeavour by his witnesses to prove, that there existed a mutiny in this island upon the 10th of July, upon what principle of duty could he, with a mutiny either then raging or so recently quelled, have withdrawn himself from his command on the 11th, if there did exist in that garrison, under his command, a mischief of such magnitude as required to be repressed without the forms of trial? and I shall presently show you that no forms of trial known to the administration of law in its loosest form did exist. If what passed there is not defensible upon the score of its conformity to any legal forms of trial whatsoever, and is defensible only upon the ground of immediate urgent necessity compelling him, for the defence of himself and his garrison, to adopt the extraordinary means of force which were resorted to upon that occasion,—if there existed this necessity on the 10th, how are we to account for his immediate departure on the 11th? or rather, does not his subsequent conduct in this respect, show, that it is impossible such necessity could have existed?—how are we, I say, to account for his withdrawing himself from the garrison on the morrow, and taking with him three officers out of seven (which was, I think, the total number of officers) who must have been essential to the preservation of order and government in the garrison, and to the protection and safety of that settlement itself?

Gentlemen, if it were true that there had existed a mutiny there, I ask you, whether, in the first representation which a governor retiring from his command would make, having left one of his majesty's garrisons if not in a state of mutiny actually then raging, at least in a state of mutiny recently quelled and suppressed by measures of no common severity,—I ask whether, in his first representation to his majesty's government at home, he would not have notified the fact of such mutiny having happened? would he not, instantly on his arrival, have given an account to that department of his majesty's service to which he was immediately accountable for the exercise of his delegated powers, of the fact of such a mutiny having existed, and that he had used his utmost means to repress it, and what

those means were? With a view to the ascertainment of the fact whether he made any representations of this kind, I directed an inquiry to be made; if it had turned out that he had made such representation to his majesty's government when he came home, it would have been my bounden duty, both to the prisoner and to the public, to have given him, in its full avail, the benefit of his conduct in that respect. But I have in my hands the letter he wrote on the 26th of August 1782, after his arrival in England (the matter in question having arisen at Goree on the 10th of July preceding), in which he transmits a return of the garrison of Goree, in which he gives a detail of the relative situation of it with respect to the neighbouring garrison of Senegal belonging to the French—in which he states that he had put the men upon allowance of beef and wine—that the troops were without bedding—he states a variety of other inconveniences, as affecting the garrison—he describes many circumstances particularly respecting the French garrison of Senegal—he represents several matters to the board of ordnance, and furnishes many other details of duty—returns an account of his garrison—mentions even in a *nota bene* at the foot of this account, that lieutenant Poplett of the African corps, who will be produced by and by as a witness, was in arrest and under the sentence of a general court-martial, and yet this momentous matter of a dangerous mutiny supposed to have existed, and to have required to be repressed by very severe immediate punishment, and without waiting for the forms of trial, *is never once the subject of mention, directly or indirectly*, in the whole of this detailed and particular communication, which he made to government on this occasion. At that time, you will recollect, as he had recently arrived, he could not know (for he had departed from Goree on the 11th of July) what had been the event, which followed upon the punishment inflicted upon this man; and therefore a regard to his own safety did not operate to prevent his stating any thing respecting him; but the impulse of duty arising from the extraordinary situation and circumstances of the case, if there had been a mutiny, and if this punishment had been actually inflicted for mutiny, would, it should seem, have called upon him to have stated that there had existed a mutiny, which had compelled him unwillingly to resort to measures of such extraordinary severity.

Gentlemen, when I have stated that this was without any form of trial, I should tell you that there are two species of trial which the law has appointed for the punishment of military offences. There is a trial by a *general* court-martial, and a trial by a *regimental* court-martial. The crime with which this man was charged is, I apprehend, peculiarly and solely appropriated to the cognizance of a general court-martial. If I do not misapprehend the provisions and proper construction

of the Mutiny act, mutiny specifically, as an offence of that name and description, is not cognizable by a regimental court-martial. A regimental court-martial is to take cognizance of and inquire into such disputes or criminal matters as may come before them, and require the inflicting of corporal punishments for small offences; now that certainly does not include mutiny, for mutiny is punishable with death. If a general court-martial had been held, the officers who sat upon it must have been sworn; the witnesses also must, of course, have been sworn; the examinations must have been taken in writing, and a process gone through, which there is no pretence for saying was gone through upon this occasion. Was it, then, a regimental court-martial? A regimental court-martial may be held, consisting of three persons, for if five cannot conveniently be assembled, three would be sufficient. But even in this case, and in every form of trial, we are habitually taught—and taught truly, with reference to the laws of this country—that the party accused must have some opportunity of hearing his accusers, some opportunity of knowing the charge imputed to him, some opportunity of making his defence. Upon the evidence of the witnesses who will be called on the part of the crown, I am authorized to say, that nothing of this kind ever took place,—that no witness was examined,—no charge was preferred,—no notification of the offence for which he was questioned, was made to Armstrong,—and that there was not even the shadow or form of any legal trial or legal procedure adopted upon this occasion.

But let it not be understood on that account, that there may not be circumstances—it will be for governor Wall to show that such circumstances existed—which may constitute a sufficient, adequate, and full defence for a military officer, in the infliction of punishment, without either a general or a regimental court martial; for if there be that degree of imminent necessity, which supersedes the recourse to any ordinary tribunal; if there be actually existing that flagrant mutiny which must either be suppressed by force, and by the immediate though irregular application of severe punishment, or must be left to rage uncontrolled at the utmost peril of public safety—that which I was just now pronouncing to be irregular becomes, if the more regular and appropriate course of proceeding in such cases cannot be resorted to, itself regular and capable of being justified upon every principle of public duty; for it imports the public safety, that the means of resisting an enormous and overbearing evil should be as strong, sudden, and capable of application, as the evil itself is capable of immediate mischievous effect; and if this has been the case here, it will carry its own justification with it.

Gentlemen, upon this occasion, therefore, it will be most important for the prisoner, to establish that there existed, in point of fact, a

mutiny;—when he has established in point of fact (if he can do so) that there existed a mutiny, if he can go farther, and show that the ordinary modes of trial could not be resorted to, and that, upon conference with the officers, that which, on the emergency, was thought best to be done was done, and that there was no wanton abuse of power in the infliction of punishment, the prisoner will be entitled to go quit of the charge made upon him by this indictment. But if, instead of that, it shall appear to you that there existed no crime in the deceased,—that there was, in fact, no trial of him, where trial might have been had if crime had existed,—if it shall appear to you that there was not only neither crime nor trial, but that, in addition to the absence of both crime and trial, there was much malignity of motive influencing the conduct of this gentleman, to impute crime and to deny trial to the unhappy sufferer,—I am afraid the contrary of that conclusion to which I was just now leading you, must, in the proper discharge of your duty, be come to.

Gentlemen, the questions, therefore, for you principally to consider will be these;—first of all, was the death of the person, respecting whom we are inquiring, occasioned by the act or order of the prisoner? Respecting that there will be no doubt; when we shall have established that the death was occasioned by the act or order of the prisoner, it will then be incumbent upon him,—for the law certainly throws the burthen upon him, the law implying malice where the death of a fellow creature is occasioned by any one, unless a justifiable cause can be shown for such death,—it will then be incumbent upon him, I say, to show the existence of crime in the prisoner, and the impossibility of regular trial for the same, and the reasonable fitness of the means substituted and resorted to in the place of trial. These things it will be incumbent upon the prisoner to prove.

It may, perhaps, likewise be proper for him, in farther exculpation of his conduct, to show why he withdrew himself from justice at the time when he was first apprehended, as it will appear to you he was, at Bath in the beginning of the year 1784, and thereby frustrated the prosecution which was then prepared against him. Gentlemen, it should seem that if he were an innocent man, that was, of all others, the most convenient and desirable time of trial for him; for if the representation that is to be contended for to-day be true, that, assisted by other officers in the garrison, he did, with their concurrence, pronounce some sort of sentence upon this person, in consequence of which he suffered the punishment inflicted upon him, would not that time of trial, of all others, have been the most convenient and eligible on his behalf, when the persons so concerned in the transaction were living, when many if not all of them were within the realm, and could have been produced as witnesses to corroborate his

story, if true, in every part of it? Captain Lacy, who succeeded him in the government, was then living, and certainly was then within the limits of the realm;—besides captain Lacy, there were then also living ensign Ford, and lieutenant Fall, who has since died, about sixteen years ago, I understand, in the Fleet prison. Lieutenant O'Shanley, one of the persons present, died, indeed, in his passage from Africa in 1784; but the other persons mentioned, captain Lacy, lieutenant Fall, and ensign Ford, were all living; the alleged ground upon which he withdrew himself at that time, as stated by him in a letter to lord Sidney, then one of his majesty's secretaries of state, was, in order to obtain some evidence for his justification; I cannot conceive that any thing which those persons, if they could have been then produced, might be supposed likely to have said, can be attempted to be offered to you in evidence this day; but if any thing respecting such supposed persons and supposed testimony is urged to you to-day, I am sure it will occur to you, that it is most strange he should not have preferred the coming forward for trial, when he could certainly have had the officers I have particularly named as his immediate compurgators, being, as they were (if his story be at all true), the very persons concerned with him, in ordering the infliction of that punishment which is in question before you this day.—He writes this letter:

[Mr. Attorney-general read the prisoner's letter to lord Sidney, dated the 15th of October, 1784.]

This letter is written in October 1784, and yet this person did not in any shape tender himself for trial till the latter end of the year 1801, at which time he writes a letter of the 5th of October, and another of the 6th of October, addressed to lord Pelham, in which he intimates that he had returned to England to meet the charge against him; perhaps the hand of death having destroyed and swept away many witnesses, made it more convenient for him to appear now than heretofore, but the hand of death will have operated most adversely to him, in case the testimony of the several officers who were living in 1784, and have since been swept away, would have been of any service to him on his trial. If he entertained no apprehension of disservice and prejudice from their testimony, I am at a loss to suggest any reason why his trial was not brought forward then; but if their testimony was expected or known to be adverse to him, I can see every reason arising from a due sense of danger, and regard for his own safety, which may have operated to prevent his surrendering himself to justice sooner.

Gentlemen, the circumstances for your consideration are these. First, the fact,—whether the death was occasioned by this person's means. Respecting that, as the punishment will be proved to have caused the death,

and as the punishment originated from his command, there can be no doubt that the death was so occasioned.—The next inquiry for you will be, whether there existed any justifiable reason for the infliction of the punishment which produced the death. To constitute such justifiable reason, it will be necessary for the prisoner to establish the existence of the crime of mutiny, or of some other competent crime, authorizing the infliction of such a punishment. It will then be necessary for him substantially to show, that there was a trial such as the law requires in the case of general courts-martial or regimental courts-martial, or, in the absence of all such proofs, and under an inability to make any, it will then be incumbent upon him to establish that such a punishment in kind and degree was inflicted, as the immediate urgency of the case required, for the necessary preservation of the settlement, the interests of which he had peculiarly and immediately under his charge.

If the prisoner can make out such a defence,—if he can make out substantially the crime of mutiny, I should be sorry to press him with the non-observance of any of the minor forms of trial, that is, supposing that there existed the crime of mutiny, and that the crime was announced to the party charged therewith, and that he had any opportunity for his defence against it. But if there existed no crime,—if none was charged at the time,—if a silence is observed by the prisoner respecting the existence of any such crime at the time when, upon his return, he should have announced both it and the rigorous measures he had been obliged to adopt thereupon, to those to whom he was immediately accountable for the conduct of his government;—if you find, in contradiction to the idea of any supposed mutiny, that he ventured to withdraw himself from his government, at a moment when it would have been in violation of every duty which he owed his majesty's service as a soldier and an officer so to have done, if a mutiny so dangerous as to supersede the necessary forms of law had existed on the very eve of his departure, and might be supposed not to have been even then fully suppressed;—he will, in that case, have a difficult task of defence thrown upon him. If however, he can, upon the whole, give you reasonable evidence of delinquency on the part of the person upon whom this punishment was executed, and a reasonable degree of necessity for executing it at the time, and in the manner and way in which it was executed, God forbid, not only for his own sake, but for the sake of the discipline of the army, and for the safety of us all, which in some degree depends upon the due enforcement of order and obedience in every department of public service, God forbid, that a hair of his head should be touched! But if, after all, the charge of mutiny shall evidently appear to you to be but a pretence, brought forward to cover a malicious and unauthorized

act on his part, at the time when it was done; and if, from all the concomitant circumstances—if, from circumstances immediately consequent upon the act, at the time of his return—if, from his flight shortly after that period, and his not proceeding to trial when the witnesses, who he would have you to believe could have spoken immediately and effectually to his justification, were living, and capable of being produced—if, from these, and other circumstances, your minds shall be induced to form a conclusion wholly adverse to the prisoner, and if the facts shall fairly warrant you in so doing, however painful the result may be to the prisoner at the bar, his relatives, and friends, however painful the steps which lead to such result, may be, to the feelings of those who are now urging the demands of public justice against him, however painful it may be, more especially to you, gentlemen, upon whose verdict, as a jury of the country, that result will immediately depend—it is still my duty to ask, and your duty to give, that verdict which the facts of the case, and the due application of the law of the country to such facts may require, and to find him guilty of the crime charged upon him, if, in the conscientious discharge of the solemn function cast upon you, you are warranted and required so to do. It will give me great satisfaction, if he is able to establish that there existed in this case such circumstances as will make the crime with which he is charged not entitled to be denominated and considered as murder.

EVIDENCE FOR THE CROWN.

Evan Lewis sworn.—Examined by Mr. *Solicitor General* [the hon. Spencer Perceval, afterwards first lord of the Treasury, and chancellor of the exchequer.]

Were you a soldier in the garrison of Goree in the year 1782?—I was.

How long had you been in that garrison?

—I believe I landed there either on the 9th or 10th of May, 1779.

And continued there till what period?—I believe it was Christmas eve, 1783.

Who were the commanders of that garrison during that period in which you were a soldier in it?—The first was lieutenant colonel Rooke.

Do you recollect how long he continued in command?—I do not.

Who succeeded him?—Captain George Adams.

Who succeeded him?—Joseph Wall.

The prisoner at the bar?—Yes.

Do you recollect the time when captain George Adams left the garrison, and colonel Wall succeeded to the command of it?—I do not.

Can you tell about what time it was?—I cannot.

Do you know how long governor Wall continued in the garrison before he left it?—About a year and a half, not quite two years, I believe.

What situation did you hold in the army that was there?—I was a private soldier first; I was corporal, and have been a serjeant since.

By whom were you advanced to be a corporal?—By governor Wall.

In July, 1782, what situation had you?—I was a corporal, and doing serjeant's duty, or land serjeant they call them.

Were you at any time orderly serjeant?—I was.

What is the particular duty of the orderly serjeant?—To wait at the commander in chiefs, and to be at his call, and to go wherever he sends him.

Were you in that situation of orderly serjeant, on the 10th and 11th July 1782, attendant upon the person of the governor?—I was.

Do you know when the governor left the island?—The 11th of July, 1782.

Was his intended departure from the island announced before the day on which he left it? Was it known in the garrison that he was to depart?—I had heard it a day or two, or more, before.

Was it known on the 10th that he was to depart on the 11th?—It was.

Relate what you observed on the 10th of July 1782, in the morning, while you were attending on the person of the governor as orderly serjeant?—In the morning of the 10th, I cannot be sure as to the hour, I was at the gate before the governor's house; I saw a good many men coming from the barracks way.

About how many?—May be fifteen, twenty, or more.

Do you think there were more, or not?—I cannot pretend to say.

They were coming from the barracks way, you say, in what direction?—Towards the governor's house.

Did they stop at the government house?—No; they went past the governor's house to the commissary's house.

The commissary's house was farther from the barracks than the governor's?—They had to go past the governor's gate to get to the commissary's house.

Who was the commissary?—Ensign Deering.

Where was governor Wall at this time?—I do not know whether he was at the door, or in the house at that time.

Did he observe the men?—Whether I told him, or he saw them, I do not know; but he desired me to go to them, and know what they wanted; he asked what those men wanted; I told him, "your excellency, I don't know;" then he told me to go and know, to go and ask them.

Did you go?—I did; I told them, the governor desired me to know what they wanted; and one of them made answer, that they were coming to the commissary, to ask him to settle with them for their short allowance of

provisions, I think it was, before the commissary went to England.

Am I to understand from that, that it was known the commissary was to depart with the governor?—It was.

Did you carry back this information which you received to the governor?—I did; and the governor told me to go and tell them to go to the barracks directly, or else he would flog one half of them.

Did you go and tell them this?—I did.

What did they do in consequence?—They went directly.

Had these men at that time their arms?—I saw no arms, nor side arms about them.

Was there any thing tumultuous or disorderly in their manner of proceeding?—No; when I told them what the governor said, they went off directly quietly, and said nothing.

Did any thing else pass in the course of that day, and at what time after?—A body of men came afterwards, I cannot say whether it was the same or not.

About how long after the first?—About an hour, or an hour and a half afterwards; it was in the forenoon.

Can you tell about the number of men that came the second time?—I cannot.

Were they as many or rather more?—I think there might be rather more.

Upon your seeing these men coming, had you any communication with the governor?—I told the governor of it the second time, before they came up near his house.

What did the governor do, upon receiving this information?—He came on the outside the gate, to meet them; he met them against they came opposite the gate, or nearly; he called out to Benjamin Armstrong, who was one of them.

What was Armstrong?—He was a serjeant.

What did the governor say to him?—The governor said, "Armstrong, what do you want?" Armstrong said, "Your excellency we are going to the commissary, to ask him to settle with us, before the commissary goes to England."

In what manner did he address the governor upon this occasion? how did he come up to him?—He came up with his bat in his hand, and addressed him as usual in former times; told him "Your excellency, we are going to the commissary"; I stood as near him as I am to you at the time, by the gate [six yards.]

The governor, Armstrong, and you, were nearly together?—Yes.

In a situation that enabled you to hear all that passed between them?—It was near enough; but I cannot say I remember all that passed between them.

As far as you can recollect, what passed between them; tell us?—I do not recollect any more than that the governor told them again to go to the barracks; he threatened them,

and they went; the men stood where they were; Armstrong came forward to the governor from the men; the governor went up to the men.

Did Armstrong come forward from the men, before or after the governor called to him?—He came upon his calling him.

Did you hear what passed between the governor and the men?—No, I did not; when the governor went up and spoke to them, they turned their backs and walked off; they seemed to be frightened.

Did they go off immediately upon his coming up to them, or was there any conversation or parley between them?—I do not know that there was any; they appeared to go immediately upon his coming up.

Was there any noise, disturbance, or disorderly appearance among them, upon this occasion?—I did not hear any.

Were they, this second time, with or without arms?—They had no arms that I could see, no side arms; they were not in uniform, they came in blue jackets; some in one thing, some in another.

Then you did not hear any thing pass, excepting between Armstrong and the governor?—I did not.

Do you recollect, whether there was any disrespectful language used?—No, I did not hear any.

Tell, as near as you can, what time of day it was when these men, the last time, went away from the governor?—I suppose, between eleven and twelve, or about twelve; it was before dinner.

What time is the dinner hour?—I cannot exactly say that; I believe the governor used to dine about two.

Do you mean it was before the men's dinner time, or the governor's?—The men dined when they could.

Then, when you said it was before dinner time, did you mean the governor's dinner hour?—Yes.

What passed next, in the course of that day, worth notice?—After the governor's dinner, the governor went out, and I followed him.

You stated, these men said they were going to the commissary to settle for their short allowances; do you know whether there was any thing or not due to them on that account?—We conceived there was; for we had been upon short allowance for a long while at different times, but how much I did not know.

Do you happen to recollect whether, at the dinner that day, there was any particular company with the governor?—There were two or three of the officers, I believe, dined with him.

After dinner, you say, the governor went out, and you followed him?—Yes.

How long after his dinner was this?—I cannot tell; the officers, I thought, left the governor sooner that day than they used to do; they used generally to spend the evening.

What did the governor do?—He walked out, and went by the main guard, towards the parade.

Did he give any orders at that time?—The guard turned out, as he went by, to salute him.

Was that as was usual upon the governor passing them, or any thing particular?—It was a usual thing.

Did he give any orders?—He went up upon the ramparts, facing the parade; there were two or three six pounders there; I stood upon the rampart next to the main guard; the governor ran by me to the main guard, and he began to beat one of the guard that was then under arms.

Did it appear to you what was the occasion of this?—I understood the man was in liquor, and I believe he was; he beat him a good while, I believe with his sword; then he took the bayonet from the sentry that was before the guard-house, and beat him with that; then he confined both the sentry and him.

Did he give any orders then?—To the best of my recollection, he ordered the drum to beat the long roll, to call the men upon the parade.

What became of you?—I was sent by governor Wall, if I recollect right, to the barracks, to tell them to fall in, as they were not to have any arms.

Did they obey this order?—They did, directly; they came without arms, some in one coloured clothes, some in others. As it was sooner than usual for the parade, the men were not in their regimentals.

Who was the officer that paraded them?—I cannot exactly tell; captain Lacy was there, I believe.

But what non-commissioned officer?—I do not remember.

You say this was before the usual time of roll call?—It was.

What is the usual time of roll call?—A little before sun-set, I do not recollect; it is a good while since I was there; this was rather before that time.

Was it much before, or how?—It might be half an hour before; I cannot exactly tell.

Were any orders given them, when they came upon the parade?—They were ordered to form into a circle.

Who ordered them?—I do not know whether it was governor Wall that gave the order, or one of the other officers. Governor Wall was there.

I think you said captain Lacy was there?—He was.

Do you remember the names of any other officers that were there?—Mr. Ford was there I believe, and lieutenant Fall, and lieutenant O'Shanley was there also; I believe they were there before the end of the business; I do not know whether they were there at the beginning.

Did they form any part of the circle?—They were in the middle of it.

What size was the circle?—It was but small; there were not three hundred men there.

Was it formed one or two deep?—To the best of my recollection, two deep.

Do you know what the number of the whole garrison was, at that time?—I believe not three hundred; I am almost sure it was not.

What situation were you in?—Close to the circle on the outside.

Where was the governor?—He was inside.

Were you near enough, were you in such a situation that you could hear what was passing within the circle?—I was; I heard some words that passed.

Could you see what passed?—Yes, very well; I was leaning rather between the men, with my head over, to listen and see.

What did you observe to pass within the circle, when it was formed?—There was a carriage of a six pounder brought in, I believe, just after the circle was formed.

Do you know who brought it in?—There were some blacks there, I saw, but I do not know whether it was they that brought it in or not.

Did you observe any thing pass between the officers?—I saw the governor speak to the rest of the officers, but what they said I do not recollect.

Was the gun-carriage brought in before you observed the governor speaking to the officers, or after?—I cannot pretend to say.

Did you hear the governor say any thing that you do recollect?—Not to the officers.

To any one else did you hear him speak?—Yes, I heard him call Benjamin Armstrong out of the ranks.

Where was Armstrong at that time?—Among the rest of the men in the circle, in his proper place.

Did he come out?—He did.

What happened when he came out?—He was ordered to strip by governor Wall, and was tied up to the carriage of the cannon, and governor Wall ordered him to be flogged, and he was flogged by black men.

Were more than one person employed in it?—There were five or six, to the best of my recollection; I believe six; they changed as the drummers in the army do; I cannot exactly tell how often, I believe about every twenty-five lashes.

Do you recollect how many lashes he received?—No, I do not; he had a great many.

Do you know how long it was about?—I cannot tell.

Were you near enough to see what the instrument was with which he was flogged?—It was a kind of a rope.

Can you tell the size of the rope?—No, I cannot pretend to say now.

Was it the usual instrument of punishment?—No, I never saw any one punished before with a rope of that kind, nor by blacks before.

Were these blacks any part of the regiment?—They were not.

Did you ever see any body punished in that way before, and with such an instrument?—I never did, neither before nor since.

Where was governor Wall during the time that this punishment was inflicted?—He was in the circle, just by the person that was punished, urging them to do their duty, and threatening them if they did not.

Do you recollect any expressions he made use of at the time?—I heard him say, "lay on you black buggers, or I will lay on upon you."

Do you recollect any other expressions?—I heard him say several times, "cut him to the heart; cut him to the liver;" I heard him say that several times.

Did you hear Armstrong say any thing to him, during the time the punishment was inflicted?—I believe he begged for mercy, but I do not exactly remember the words.

Did the governor say any thing to him?—I heard him say during the punishment, but I am not certain whether it was Armstrong, or any of the others.

You do not recollect, whether the expressions you remember to have heard from the governor were made use of during the punishment of Armstrong, or any other person?—I have not said what you mentioned; what I have said was during the punishment of Armstrong.

What became of Armstrong after the punishment?—I believe he was taken to the hospital between two men; I saw him going away from the circle.

At this time was there any appearance of mutiny or disobedience among the soldiers?—I did not see the least, nor hear of any.

Did you see or hear any thing of any mutiny or disturbance, between the time when the soldiers came last to the commissary's house, and the time of the punishment?—I did not see any nor hear any; I was in the barracks once in the course of the day.

Did you at that time observe any thing mutinous?—I heard them talking that they were a coming up to the commissary; that was before they came first of all; and they said they were advised, by lieutenant Fall, to come to ask the commissary to settle with them, before the governor and the commissary went away.

Can you tell us, with any nearness, the number of lashes Armstrong received upon this occasion?—No, only by hearsay; I did not reckon them.

Do you know what became of Armstrong?—He died, I understand.

Do you know it, of your own knowledge?—No, I do not know that I ever saw him afterwards dead or alive; I heard he was dead.

How soon after did you hear of his death?—I believe in two or three days after he was punished, but I cannot say the time.

Was any court-martial held in any shape upon this Benjamin Armstrong, before he was punished?—I did not hear of any.

Were you near enough to see it if there was?—Certainly, I was.

Was he called upon to make any defence?—No, he was not.

You are confident of that?—I am confident of that.

You have been so long in the army probably you have heard of drum-head courts-martial?—Yes.

Did you ever see any such?—I saw a drum-head court-martial at Chatham.

Upon those occasions, is it usual that the person who is charged before such a court-martial is called upon to answer to the charge?—It is so long ago that I cannot recollect.

What did pass at Goree? was it like a drum-head court-martial?—I saw the governor speaking to the officers, and saw them speaking to one another for a minute or two, and then turning to the governor; I did not see any pen and ink made use of.

Lord Chief Baron Macdonald.—Repeat that.

Witness.—I saw the officers talking together for a minute or two, and then they turned to the governor, who stood just by them when they were talking, and spoke to him.

Did you see the prisoners at a drum-head court-martial defend themselves as in a rooth?—I thought an Englishman had that privilege every where.

Mr. Solicitor General.—Did this conversation pass before Armstrong was called out of the ranks, or afterwards?—Before he was called out of the ranks.

Was there any sentence pronounced upon him? was he told what he was to be punished for?—I did not hear any, and I do not believe there was any.

Were you near enough to have heard, if there was?—I was near enough to hear some words; I heard some words plain enough; I heard him called out, and heard him ordered to strip.

But you did not hear any thing said to him, declaring any sentence?—I do not remember hearing him told what he was going to be punished for.

Were the first words that were addressed to him, those which called him out of the rank, and ordered him to be stripped?—Yes.

When did governor Wall go away?—The next day.

Do you know who went with him?—I believe the commissary Deering for one went away with him; I do not recollect any other officer going with him.

Evan Lewis cross-examined by Mr. Knowlly.

I perceive you have forgotten a good many things; from the length of time, there are many things you do not recollect?—I do not doubt there is.

Do you mean to say that the sentence

against the prisoner (if a sentence of eight hundred lashes) was not pronounced in his hearing? do you mean to swear that positively?—I did not hear that.

That is all you mean to say, that it might have passed and you have forgot it?—I did not hear any body else say it.

You are now a Bow-street officer and must understand something about the nature of evidence; you only mean to say that you did not hear a sentence of eight hundred lashes pronounced against him?—No, I did not.

You were the orderly sergeant stationed at the governor's gate?—I was.

What number of the garrison did the African corps consist of?—I do not recollect; a good many of them had died before that time.

It was a very unhealthy place, and a great many people had died?—Yes.

There were as many died as six hundred out of seven hundred, I believe?—I belonged to the African corps myself.

Did the African corps form the greater part of the garrison?—I cannot pretend to say.

You were orderly sergeant, were you not?—I was.

You saw the garrison from time to time?—Certainly, I did.

How many years did you live in the garrison?—From 1779 to 1783.

Between three and four years; and do you mean to tell me, that you really cannot say whether the African corps made the greatest part of the garrison or not?—I cannot tell whether they did, or did not.

You mean to swear that positively?—Yes.

Is it that you have forgot it?—I might know it then, because I had the different returns.

Then the number of the garrison and of the different corps passed through your hands?—They did. We were all African corps at that time, we were all turned over to the African corps.

Then surely you can tell me whether the African corps was not at this time the greatest part of the garrison?—I cannot; I mean to tell the truth.

How often did you attend the roll-call?—I attended the roll-call when I was off guard, always.

Every day of your life?—Every day that I was well.

I will thank you to look to the gentlemen of the jury. As you attended the roll-call every day of your life, has your memory so far failed you, that you cannot tell what was the usual hour of the roll-call?—I do not recollect the hour; I said before, it was a little before sun set.

And you do not recollect what was the usual hour of roll-call?—I do not recollect; I was but young then.

And you think your memory was not so good then as it is now?—It was better then, I suppose; but it is almost twenty years ago

since this happened, and I remember things as well now of course.

You told us "we conceived there were some arrears, some stoppages due to us?"—There was.

How often had you been consulting about it with the men who came upon the parade that morning?—I do not know that I had been consulting with them about it; I heard them say they intended to come up from the barracks that day.

How often had you consulted with them that they should do that?—I never consulted them at all.

You swear that? that you never consulted with them at all?—I do not recollect that I did.

Had you had any meeting with them upon the subject of their coming to the governor's house that morning?—I never had.

It was known that the governor was going to leave the island, on account of ill health?—I do not know that I heard upon what account he was going to leave it; it was well known he was going to leave it.

How long before he did leave it, did you hear any of those conversations in the barracks, of their intention to come up to the governor's house?—I do not recollect I heard any thing of it before the 10th; when I went down to the barracks, I heard the men talking about it.

Do you mean to say positively that there were no conversations that passed in your presence before the 10th upon that subject?—I do not recollect it; I cannot swear that there was not.

Then all that you can swear is, you do not recollect any, but you will not swear positively that there were not?—I will not.

At the time that these men came up the first time, was not Armstrong with them?—I do not remember that he was, but he might be.

How many, in point of number, were there?—I cannot tell; there might be twenty, more or less.

Do you mean to swear you do not believe there were fifty, sixty, or seventy?—No; I do not think there were.

I would tell you there were people at the government house whom I mean to call?—I do not think there were; there were about twenty.

How long might they remain assembled before the government house?—They went to the commissary's house the first time; they did not come to the governor's house.

It was the second time they came to the governor's house, was it?—They stopped in the way, the governor came out to meet them.

Lord Chief Baron *Macdonald*.—Do you mean to say, that on the second time they stopped of their own accord?—They stopped when the governor called Armstrong.

Mr. *Knowles*.—Was it the first or the second time the governor called Armstrong?

The second time; the governor did not come out of the court-yard the first time, as I recollect.

Do you mean to say that they did not speak to the governor himself the first time they came up?—Yes, I do positively; nor the governor to them.

Do you know Mrs. Lacy, the wife of the person who succeeded governor Wall?—I did know her when she was there; I do not know whether I should know her now.

Governor Lacy took the command after governor Wall had left the place?—He did.

Mrs. Lacy was in the government house I believe at that time?—I do not know whether she was or not.

Then, the second time, they came up you say in a body?—Yes, I believe, rather more in number than the first time.

The first time, they were ordered to march away?—Yes.

Who headed them, when they came up the second time?—Armstrong was with them, and I believe one of the foremost.

Did he not head them as their leader?—I cannot say whether he did or not; he was foremost.

Standing foremost?—He was walking before them, or one of the foremost.

Do you mean, walking before them as an officer walks before his men?—I cannot say exactly.

It is an extraordinary thing; and you were there the orderly serjeant for the protection of the governor; did you make no observation upon that, whether he walked before them as an officer walks before his men, or they all came up together in a crowd?—He might be before them and others.

Did they come up like a crowd of people in the street? or come up, and he moving before them, in a body?—There was a longish string of them.

Did you ever see any of the like number of men in London move in the way in which they did?—I cannot say.

I ask you, upon the oath you have taken, did they not come in ranks as soldiers do?—I cannot say that they were in ranks, properly.

Did they not come up as a military body?—Some had one colour clothes some another.

I do not ask as to their uniform, but as to their mode of acting; did not they move as a military body, as near as possible in rank?—They were walking on much like that.

Lord Chief Baron *Macdonald*.—Had they the appearance of military men?—They were in a longish body; Armstrong was one of the foremost, whether he was before them all or not I cannot say.

Mr. *Knowles*.—You have seen many crowds of people in the streets of London, did they move like an ordinary crowd that you ever saw in your life?—They did not; there were but few in number to what a mob in London is.

I did not ask you as to numbers; but did

they move like any other number of men that you have seen?—I cannot say as to their moving; I went and told the governor; they moved but little in my sight.

As soon as you saw them, you went and reported to the governor?—Yes, the second time.

Why did you go and report it to the governor?—I thought it was my duty, and that the governor might blame me if I did not.

I ask you, upon the oath you have taken, were you not under alarm at that time from the appearance of the men?—I was not alarmed.

Not for yourself?—I was not.

Nor for the governor?—No, I was not, upon my oath.

Why then did you go and report that to the governor?—Because I thought he might blame me for not telling him.

How far were they off then?—Forty, fifty, sixty, or a hundred yards; I cannot tell.

And though they were at that distance, you reported their coming to the governor, before they had done any thing?—Yes, I saw them coming.

Then were they not coming in military order?—I do not know but they were rather in order.

You conceived it your duty, at the time, to go and acquaint the governor of this approach of the men?—I did.

Who was their spokesman upon this occasion?—I did not hear any speak but Armstrong. Armstrong was called, and he spoke to what questions the governor asked him.

Did you hear the governor order Armstrong to march them back?—I heard the governor tell them to go to the barracks.

That is, back from the governor's house, is it not?—Yes.

What was Armstrong's answer to that?—He went away, I did not hear him give any answer.

You told me, you heard the governor order him to march them back to the barracks?—No, he ordered them to go back to the barracks; he told the men to go to the barracks, or he would flog them.

Was that the second time, or the first?—The second time.

What was Armstrong's answer to that?—I did not hear him make any answer; he went away.

Do you mean to swear he made no answer?—No; I say I did not hear him.

Do you mean to swear that he made no answer?—No, I do not.

How close were you to the governor at the time he spoke to Armstrong?—When he spoke to him first, I was not much farther than I am from you; when he called him to him, Armstrong advanced to him with his hat in his hand.

Did he order Armstrong to go back, or to take the men back?—He was talking to Arm-

strong; Armstrong turned his back upon him after the governor had threatened him.

Threatened him with what?—To punish him, to flog him.

What for?—I suppose—

Do not suppose; but what did the governor threaten him for?—Armstrong told him they were going to ask the commissary to settle with them for their arrears; the governor told him he did not know what he was about.

Did not the governor then order him to take the men back?—He ordered him to go back; I do not recollect whether he said to him to take them back, or go back.

How far was Armstrong advanced before the body of men at this time?—Not far; ten or a dozen, or fifteen yards perhaps.

At the time when Armstrong was advanced before the rest of the men, in what order did they stand?—They stood with their faces towards the governor then, I believe.

Have you any doubt of it?—No.

Were they not then drawn up in order?—I cannot be sure whether they were or not.

Were they standing in a circle as a mob might do, or in military order?—They were standing, I believe, near in order.

Do you mean to swear that Armstrong made no answer to the governor, when he told him to take them back?—I cannot say I heard him say any thing.

If there had been any answer made, you must have heard it, must you not?—Yes, but I might forget it.

I will put you in mind of the answer. I ask you, was not the answer this, "I will be damned if you shall go off the island, till the stoppages are paid?"—I heard no such thing.

Do you mean to swear, that it was not said by him as you were close by?—I did not see any appearance of any thing of that kind.

I ask you, whether the answer he made him was not that "he would be damned if he should stir from the island, till the stoppages were paid?"—I heard no such words.

Do you mean to swear that he said no such words?—He might, when he turned his back.

But when the governor told him to go back, do you mean to swear that was not the answer, "I will be damned, if you shall go off the island, till the stoppages are paid?"—I heard no such words, nor do I believe they were said.

Will you swear they were not?—I will not.

Do you think it is possible you could forget such an answer from a serjeant to his governor?—I am sure I did not hear them; for if I had heard such words as that I should not have forgot them.

But you are sure you did not hear them?—I did not.

At the time they turned their backs, you say, and went off, do you mean to swear that they went off quietly?—I saw no other appearance.

Do you mean to swear they went off quietly?—I saw no other appearance of them, but peaceableness and quietness.

Do you mean to swear they did not throw up their hats, or shout?—Not that I recollect; they did not in my sight, I am positive.

Did you see the governor go towards the seaside soon after this?—I do not remember whether I did or not.

Before they parted, did they not tell the governor, at the time Armstrong was by, they would give him a certain time to consider of their proposal?—I heard no such thing.

Do you mean to say that did not pass?—I am sure it did not in my presence, as sure as I am here now.

I ask you, whether the governor himself did not say, "give me an hour, then, to consider of your demand," or "some time to consider of your demand?"—No, I did not hear any such thing.

You laugh at it?—It makes me smile, because I do not believe there was any such thing.

How far is the governor's house from the sea-side?—I cannot say.

About how far?—Between a quarter of a mile and half a mile one way, if you go the road.

Did you see him go in a direction towards the sea-side, and Armstrong come up to him?—When?

That same morning, soon after this took place?—I did not see the governor go out that morning; if he had, I must have been after him; he might have gone the back way, and come in through the garden, for aught I know.

Did you see Armstrong with him after this time?—I did not.

How long after this was it that the governor sent for the officers, Mr. Lacy, Mr. O'Shanley, Mr. Ford, and Mr. Fall?—I cannot say; he did not send me for them.

How long after the men had left the government house, was it before the officers came to the government house?—They came, I think, after the dinner bell rang.

How long was that after these people had left the place?—About two hours I believe; I cannot pretend to say; two or three hours, perhaps.

You say the officers left the government house unusually early that day?—Yes, they went off earlier than usual, and I mentioned it.

It struck your observation?—I said I wondered they were going so soon that day from the government-house.

They went from the government-house to the parade; did they not?—They went towards the parade.

How long afterwards did the governor follow them?—He was not long before he followed them; it was pretty soon after.

The officers then were assembled on the

parade before the usual time of day?—I do not recollect seeing the officers, till the men fell in.

One of the men under arms was drunk?—One of them was in liquor.

Did you go to the guard-house with the governor?—I was standing in sight of the door.

Lord Chief Baron *Macdonald*.—Did the governor go into the guard-house?—I cannot say whether he went into the guard-house; he went into the shed.

Mr. *Knowllys*.—A man of the name of Fawcett was sentry at the guard-house, I believe?—I believe he was.

Did not the governor attempt to put a man in custody at the guard-house?—I believe he did put him in custody; he went in out of my sight.

At the time the governor was attempting to put this man in custody at the guard-house, did not you see the sentry point his bayonet to his breast?—No.

Do you swear that it did not pass?—I did not see it.

Do you swear it did not pass?—No, I do not swear it did not pass.

Did not you see the governor disarm that sentinel?—I did.

Do you mean that was the sentinel that was drunk?—He might be drunk for aught I know.

But was it another man you had been speaking of that was drunk under arms, not Fawcett?—Yes, one Evans.

What was Fawcett doing, at the time the governor disarmed him?—I did not see him do any thing, but walk backwards and forwards before the guard-house.

Then you do not know what the governor disarmed him for?—I do not.

You cannot tell whether he pointed his bayonet to the governor's breast?—No.

Or whether he swore he should not enter the guard-house?—No.

You cannot tell whether that passed or not; how near were you to him?—Not quite the breadth of the court.

And you really cannot tell whether any thing of that sort passed or not?—I cannot.

Lord Chief Baron *Macdonald*.—You say you saw no such thing?—I did not, nor ever heard of any such thing since.

Mr. *Knowllys*.—The African corps was more generally composed of convicts from this country?—I do not know what they were composed of; I was there before them, so I cannot tell.

But you learn each other's history, and so on?—I cannot say whether they were convicted or not here.

Because you were not here to see them?—No.

And that is the reason you cannot tell?—Yes.

So you really have no belief upon the subject, whether this corps was more generally

composed of convicts?—I heard they were generally people of indifferent character.

Can you tell me how long before the usual hour of roll-call it was, that the people were summoned from the barracks, to form the parade?—I cannot tell how long, may be half an hour or more before the usual time.

That is the way in which they form a drum-head court-martial, is it not, by calling the troops all round in a circle, that is the way they did at Chatham?—They had pen and ink at that time writing down the evidence, and there was one drum a-top of the other I remember.

At the time Armstrong was called out into the ring, I ask you was not ensign Fall there?—I believe he was.

Mr. Lacy, who became the governor the next day, and Mr. O'Shanley were there?—I cannot say exactly whether Mr. O'Shanley was there at the beginning or not, I know he was there part of the time.

I ask at the time Armstrong was called out of the ranks into the circle?—I did not observe that Mr Ford was there.

Mr. Ford was the officer who had the command of the main guard, was he not?—Yes, I believe he was.

You observed the governor speaking to the officers that were assembled in this ring?—I did.

And this punishment took place in the presence and sight of these officers?—It did.

Did you hear what the governor said to Armstrong, when he was called into the circle, or what any of the officers said to him?—I do not recollect any thing being said to him, but telling him to strip, after he was called in.

Do you mean to swear there was not any thing said to him by the governor or any of the officers?—No, but that I did not hear any thing said to him but that.

Mr. Ferrick, the surgeon, was there, was not he?—I saw him there some part of the time; whether he was there at the beginning or not I cannot tell.

How close was he standing to Armstrong at the time he was punished?—He was inside the circle.

Mr. Justice Rooke.—Was he there at the close of the punishment?—I believe he was.

Mr. Knowlys.—When was the first time that you observed Ferrick?—I think I saw him before the punishment was over.

But when was the first time you cast your eye upon him?—I cannot pretend to say.

They were standing two deep without the circle?—Yes, I put my head in between them.

You say, Armstrong went between two people to the hospital?—Yes.

How far is the hospital from this place?—About a quarter of a mile.

You go up a hill to it, I believe?—Yes I believe there is a hill near the hospital, but I have almost forgot what sort of a place it is; there is level ground just at the parade.

He walked there, did not he?—I believe he did.

Have you any doubt that he walked there?—I never heard that he did, or that he did not.

But you saw him walk away, upon your oath to the hospital?—I saw two men guiding him.

A man always goes in custody, does not he, after he has received punishment; have you forgot that part of military discipline?—Yes, a man goes with a file of men with arms.

Do you mean to say he did not walk from the place of punishment to the hospital?—I do not mean to say he did or not.

You saw him going?—I did.

Was he walking then, or was he carried?—He was walking, as far as I saw him, to the best of my recollection.

Evan Lewis re-examined by Mr. Solicitor General.

You told my friend, that you were neither alarmed for yourself nor for the governor when you saw these men coming towards the governor's house; but yet you thought it your duty to acquaint him of it; was that before or after he had told you to send them back?—After, this was the second time.

Seeing them come again, you thought it your duty to tell the governor?—Yes.

Mrs. Lacy's name has been mentioned; do you know where she was at that time?—I do not remember seeing her.

If she had been in the governor's house would she have been nearer to Armstrong and the governor when this conversation took place, or would she be more distant from them than you were?—A great deal farther; there is a large court yard between the house and me; I was outside the gates of the court yard, and they were in the road nigh these gates.

What size is the court yard?—Not so large as this court.

Lord Chief Baron Macdonald.—How far were the men beyond this iron gate?—Armstrong came near the gate when the governor called him, and he came to him a few yards from the gate, ten yards perhaps.

If such expressions as "I will be damned if you shall go off the island till the stoppages are paid," had been used when the governor and Armstrong were first talking together, must you have heard them?—I think I must; it could not have been without my hearing them. I was not farther from the governor than I am from you, or may be a yard farther; it could not pass, without it was after he had turned his back and had gone off.

But you did not hear it, and do not know that any such thing ever passed?—No; I never heard it at all, till now at this present time.

You say, you do not know whether the governor had sent to the officers. If he had

sent to the officers, would not you have been the person proper to carry that message, as the orderly sergeant?—Yes, or the sergeant major might carry it.

Then they did not come till the dinner bell rung?—I do not remember seeing the officers there till the dinner bell rung.

Did the officers usually dine with the governor?—Sometimes they did; I do not remember seeing them come, till the dinner bell rung.

With regard to the governor's taking this sentinel's bayonet from him; how far were you from him at that time?—As far off as this court is long.

You observed the governor disarm him?—Yes, and beat him with a bayonet that he took from him, and beat the other that he beat first.

Roger Moore sworn—Examined by *Mr. Plumer* [afterwards successively Vice-Chancellor of England, and Master of the Rolls.]

Did you serve as a private, in the garrison at Goree, in the year 1782?—Yes.

How long had you served in that corps?—Between two and three years.

What rank had you?—I was a private, at that time.

Were you present on the 10th of July, when the men were paraded?—Yes.

Were you paraded by your own officers?—I was.

Who was the officer that paraded you?—There was no particular officer that paraded; there were three officers in the ring at the time the circle was formed.

Do you remember what time in the afternoon it was?—I look upon it it was between four and five o'clock.

Have you any particular recollection about the hour?—Not in particular; it was near that time, to my remembrance.

After the parade was formed, did you see governor Wall?—Yes.

What was the first circumstance you observed, after the parade was formed?—The first circumstance I saw was, governor Wall ordered lieutenant Fall to form a circle, which he did.

What was the next circumstance?—The next circumstance, I saw the officers at some consultation, for some little time.

What officers?—Captain Lacy, lieutenant Fall, lieutenant O'Shanley, and governor Wall.

Were they all talking together?—They were talking together for some little time.

Was that on the inside of the circle, or on the outside?—On the inside of the circle.

You were in the ranks, forming a part of the circle, I suppose?—I was.

Could you hear any thing that passed?—I was not near enough; the officers spoke very gently together; what it was upon, I cannot say.

Were you in the front, or second rank?—In the second rank.

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Did you observe whether Armstrong was with the officers, when they were talking together?—No; he was called out; he was at the right of the company, as sergeant.

Was that his proper place?—It was his proper place.

The officers were in the centre of the circle?—Inside the circle, at some distance from Armstrong.

What was the first thing you heard any body say?—The first thing after that, governor Wall called sergeant Armstrong out of the rank, and represented him as head ringleader of mutiny; that was the words governor Wall expressed.

What else was said by any body?—Armstrong made some reply; but he spoke so gently, I did not hear what he said.

When he spoke that, was he near the other officers?—Yes; he was quite close to the officers; he was called out by governor Wall, and went close up to the officers.

And you heard governor Wall say what you have described, but did not hear what he said in answer?—No I did not hear him make any answer.

What did you see next?—After some little time, the timbers of a six pounder were brought into the circle; Armstrong was tied up.

By whose order?—By governor Wall's; I heard the orders given by governor Wall for him to be tied up and punished.

Was he stripped first?—Yes, he was stripped before he was tied up.

Did you see him punished?—Yes.

Who were the persons that inflicted the punishment?—One Mulatto man, the interpreter of the garrison, was the man that received orders from governor Wall to instruct the black people how they were to punish him.

What did governor Wall say to that man?—He spoke to the linguist, to show the blacks which way they were to inflict the punishment.

How many black men were there?—I cannot tell the number; I think there were about three or four.

Were they black men belonging to the regiment?—No.

With what sort of instrument was the punishment inflicted?—It was a rope.

Did you see the rope?—At a distance.

Could you form any judgment of the size of the rope?—It looked at a distance near upon an inch.

In diameter?—Yes.

Were there any knots in it?—Not that I know or ever heard.

What number of lashes were given?—Armstrong received eight hundred.

How do you know?—I counted them myself.

How many were given by each man?—They changed, the same as the drummers of the regiment.

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What number is usually given by each man before they change?—About twenty-five each.

And they changed at every twenty-five in this instance?—Yes.

Did you see what became of Armstrong?—I saw him walk away to the hospital.

Do you know what became of him afterwards?—He died in the space of four or five days after.

How do you know that?—I saw him carried to be buried.

Either before the punishment was inflicted upon Armstrong, or afterwards, had you observed any tumult or mutiny in the garrison of any sort whatever?—Nothing more than the men, before any of the punishment, in the day time of the 10th, were dissatisfied for not receiving some money for short allowance.

Do you know in what manner they had shown that dissatisfaction? had they shown it in any tumultuous, riotous or improper manner?—No more than talking one with another in the barracks; they represented to each other that as governor Wall and ensign Deering were going off the island the next day, that if they had not a settlement before, they should never have any thing.

Do you know, in point of fact, whether they had been kept upon short allowance?—Yes, we had been upon short allowance for some time.

How long?—I cannot justly say the time; for some months.

Had you heard any order issued for the settlement of the short allowance?—No, never; only for the settlement of their pay.

You say you heard the men talking amongst themselves, that they should not be paid if the governor and Mr. Deering left the island?—Yes.

Did you hear them resolve to do any thing in consequence of it?—No; I went to the water side to wash my linen, and when I came back they had been up.

Did you see them go?—No.

When you came back, did you observe any disorder or tumult in the garrison?—No, only the men seemed overjoyed to think they were going to have their settlement. Serjeant Armstrong came through the barracks, and said he had been with governor Wall and said he had settled all matters so far, that every man was to be settled what their rights and dues were; he spoke it in public, through the three different companies.

Mr. Justice Lawrence.—Repeat that again.

Witness.—That he had been with the men to ensign Deering; and he came through the barracks, and said he had been with the men, and had got every thing settled; that governor Wall said he would see every man righted before he left the island.

Mr. Plumer.—From that time till the time of the punishment, had there been any the least disturbance or tumult in the garrison?—Not that I saw.

Was the parade formed in an orderly and quiet manner?—The parade was formed regularly as usual.

And they had been quite quiet from the time of that public declaration till the punishment?—Yes, they had, as far as I saw or heard; the parade was ordered sooner, and the men turned out in their working clothes in the readiest way that they could.

Whilst the punishment was inflicting, did you hear any thing said by governor Wall?—No, I did not. Serjeant Armstrong asked forgiveness, and said he never would be guilty of the like again.

Did he say what he never would be guilty of again?—No.

Did you hear what governor Wall said?—He told him he hoped it would be a warning to him.

Was that after the punishment, or while the punishment was inflicting?—While the punishment was inflicting, when he asked forgiveness.

You had been a soldier some years?—Yes.

Can you tell us, whether there was any court-martial held before the punishment was inflicted?—Not that ever I saw; if it was a court-martial, I never saw one like it before nor since.

Did you observe, before the punishment was inflicted, whether Armstrong had been called upon to make his defence, or any charge had been made in his hearing or in his presence?—He was charged as the ringleader of the mutiny; that was all that I heard expressed to him.

Lord Chief Baron Macdonald.—Before he was called out of the ranks?—No, after he was called out of the ranks.

Was nothing said to him before that?—No.

Mr. Plumer.—How long after that was said, was it that you heard governor Wall order him to be punished?—He was tied up to be punished a few minutes after that.

You were one of the persons who had a demand for the short allowance, had you?—Yes I was, the same as the rest.

Was there any settlement of the short allowances ever made?—None that I ever knew or heard of; I never have been settled with.

Who was the commissary at the time?—Ensign Deering.

Do you know whether he is living or not?—I do not know; I never saw him since.

Do you know what is become of captain Lacy and lieutenant O'Shanley?—They are dead, I believe; lieutenant O'Shanley died on the passage-home, and I have heard captain Lacy is dead.

Lieutenant Fall?—I have heard they are all dead.

Roger Moore. cross-examined by Mr. Gurney.

What corps were you in?—In the African corps.

Had there been any conversation among the soldiers in that corps, the day before, about the stoppages?—Not till the 10th.

In the morning of the 10th did you hear any of the soldiers say, that the governor should not leave the island, till their stoppages were paid?—I never heard such an expression as that; they said if the governor left the island, they should never get it.

Where were you at about eleven o'clock in the forenoon?—Washing my linen at the water side.

At what time did you come back from washing your linen?—Between two and three o'clock.

How soon after you came back was it, that Armstrong came publicly through the barracks, telling the men he had been with governor Wall, and every thing would be settled?—Almost directly that I came into the barracks.

He went through all the three companies, to give them this information, did not he?—Yes, that every man was to be settled with.

Were the men all sober at this time?—I cannot say they were; there were some that had drank freely.

Some were pretty drunk?—Some had drank freeish.

When the parade was formed, and you were in the circle, were you an inner man of the circle or an outer man?—An inner man.

In a better situation, then, both for seeing and hearing, than any man who was completely without the circle?—Yes; we were formed two deep, I was nearer of course than the men in the rear of me.

Do you remember the governor being called by ensign Ford out of the circle?—I do; he was fetched to the main guard, I saw him go out of the circle.

Ensign Ford had the command of the guard at that time?—Yes.

Lord Chief Baron Macdonald.—Was this before or after Armstrong was called out?—To the best of my remembrance, it was after Armstrong was called out.

Mr. Gurney.—Are you quite sure it was not before Armstrong was called out?—It was not before.

Lord Chief Baron Macdonald.—Was it during the punishment that governor Wall was called out of the circle?—To the best of my recollection, it was during the punishment governor Wall was called out.

Mr. Gurney.—Did you see what he was called out for?—There was some disturbance or other at the sentry—at the main guard—but I do not know what it was.

How far was the main guard from the parade?—I should suppose about thirty yards; the circle was formed rather nearer the main guard than usual, that night.

Did you see any man outside the circle, who was guilty of any disorder at that time?—I did not.

You were attending to the punishment of Armstrong?—Yes; there was one man, before the parade was formed, in liquor, that was confined; that was before the parade was formed.

Do you know who was the sentry of the main guard, at that time?—It was Henry Fawcett, I heard say, was the man, I did not see him myself.

Where were the drummers at this time?—They were at their different companies; to the best of my remembrance, they were all at the parade the same as usual.

Were they all sober?—I cannot say whether they were or not.

Do you happen to know what had become of the cats-o-nine-tails that day?—I do not.

Had you seen any cats that day?—I had not.

Did you see any pieces of cats that day?—I did not.

You were absent about four hours in washing your linen?—Yes, I was.

You heard distinctly what passed between the governor and Armstrong, while he was punished?—Yes.

You heard him asking for forgiveness, and the governor saying he hoped it would be a warning to him?—Yes.

Was that spoken in the governor's ordinary tone of voice?—It was spoken loudly, that the whole circle could certainly hear it plainly.

Did he speak any thing else loudly?—Not that I heard, during the time.

If he had used such expressions as these "Cut the fellow's heart out, cut the fellow's liver out," you must have heard those expressions must not you?—I did not hear any such expressions.

If he had said that, must not you have heard it?—I certainly must.

Roger Moore re-examined by Mr. Plumer.

You said these men had been drinking freely;—do you know whether, in fact, liquor was given them in lieu of their pay?—Yes it was, by ensign Deering.

Mr. Justice Rooke.—Were you sober?—Yes, I was.

Mr. Thomas Poplett sworn.—Examined by Mr. Wood [afterwards a Baron of the Exchequer.]

Were you in the African corps in the year 1782?—I was.

What rank had you in that corps?—At that time a lieutenant.

Were you at Goree in the month of July 1782?—I was.

Did you see the parade formed on the 10th of July in the evening?—I did.

At what time in the evening was it?—I do not know exactly the hour; I believe between five and six.

Where were you at that time?—Within the walls of the premises in which I lived—my own quarters.

In what way was the parade formed?—

I saw the parade formed two deep ; then formed into a circle ; and within that circle I saw lieutenant colonel Wall, several officers, several black men, the interpreter, and a gun carriage.

Do you know who the officers were, that were within the circle?—I believe captain Lacy, lieutenant Fall, lieutenant O'Shanley, and, I believe, but am not sure, ensign Ford.

Did you know a sergeant of the name of Armstrong?—Perfectly well.

After the circle had been formed, what did you see done to Armstrong?—I saw Armstrong stripped, fastened to the gun carriage, and flogged on his bare back by several black men, and frequently changed, I believe at every twenty-five lashes.

Can you tell how many lashes were inflicted?—I think eight hundred.

After these lashes were inflicted, what became of Armstrong?—I saw him supported towards the hospital.

Did you observe the rope that he was flogged with?—I did at that distance.

What might the distance be?—About forty yards, on an elevation of eleven feet.

Could you distinctly see what passed?—I could.

What sort of rope was it that was used?—I can produce one.

Mr. Gurney.—Is it the same that was used?—I had it on the evening of the 11th, from one of the men who used it in the punishment of the 10th.

Mr. Gurney.—That will not do.

Mr. Wood.—Was it such a one as that you have got there?—I believe it was.

Mr. Wood.—Be so good as to produce that which you have.

[The witness produces a rope.]

Mr. Wood.—Did you observe whether the rope that was used was knotted at the end, in the same manner as that is?—I could not at that distance say positively that it was, but I believe it was.

Is it usual to inflict a punishment with a rope like that?—I never saw such a thing done in the army before.

What is the usual instrument of punishment, upon those occasions?—A cat-o'-nine-tails, composed of small cord, if severe generally of small log line, but if moderate generally whip cord.

Do you happen to know, whether Armstrong had ever been tried or convicted of any offence before this punishment was inflicted?—Not about that time, to my knowledge.

Lord Chief Baron Macdonald.—How many cords are there?—Ninetails.

Are there knots upon them?—They are generally whipped at the end tied with a bit of thread, to prevent the ravelling out.

What is the handle made of?—Wood.

Mr. Wood.—I think you said Armstrong, at that time, had not been convicted or tried for any offence?—Not to my knowledge.

Did you see any thing that bore the appearance of any sort of trial?—I did not.

Did you see him called out to be charged with any thing, before he was called out for punishment?—I did not.

You knew captain Lacy?—Very well.

Do you know whether he is dead or living?—I have heard that he has been dead some years ; I believe, six or seven, or more.

Do you know whether he was alive in the year 1784?—Certainly he was.

Where was he in the year 1784?—He commanded at Chichester in March 1784 ; I was under his command.

Do you know whether lieutenant O'Shanley is dead or living?—He died on the passage, coming over from Goree to England ; he was in the same transport with me.

When did you come to England?—We arrived in England, about the 24th of February 1784.

Do you know whether ensign Ford is living or dead?—I have been informed that he is dead, I do not know that he is.

Can you tell whether lieutenant Fall is dead or not?—I have heard he died in the Fleet-prison.

Was he living in the year 1784?—He came from Goree in September 1783.

Can you recollect when you have heard at what period he was living, whether before or since 1784?—I have never seen him since September 1783.

Were these black men, who inflicted the punishment, soldiers in the regiment, or what?—No, slaves : some belonging to the inhabitants in the island, and others employed on the king's works.

Who are the persons who usually inflict that punishment?—The drummers of the corps.

Do you know, whether there was any mutiny or mutinous disposition manifested by the soldiers, on the 10th of July?—I saw none.

Have you any reason to believe that there was any such thing?—No, I have none.

Did you know Mr. Deering, the commissary?—I did.

Do you know whether Mr. Deering is living or dead?—I am not sure.

When did you see him last?—I have not seen him some years, perhaps three or four years—I think I saw him in my attorney's chambers, Mr. Manley, one day ; but I did not speak to him ; I do not know that I have spoken to Mr. Deering these ten years.

At this time I would ask you in what situation you were on the 10th of July 1782? were you under any arrest?—Yes, I was ; I was a prisoner at large, under the sentence of a court-martial.

What became of that?—I was restored to my rank by his majesty.

Mr. Gurney.—Before you ask to that, prove it.

Mr. Wood.—You were in a situation in which you could see all this?—I was.

Mr. Knowlton.—I have no objection to the effect of it being stated without the production of the instrument, that he was broke by a court-martial, and afterwards restored.

Mr. Attorney-General.—It is only to do away the effect of his confinement.

Mr. Thomas Peplett cross-examined by Mr. Alley.

If you were under arrest at that time, I take for granted that did not make you more friendly to governor Wall. What distance was your house from the governor's house?—Perhaps it might be three hundred yards.

You had not where you lived an opportunity of seeing what might take place opposite the governor's house?—Certainly not.

You had not been at the governor's house, I take for granted, in the course of the morning?—I had not. All that passed upon the parade I could see distinctly; it was under my window; I have here a rough sketch of the position, if your lordships please to look at it.

Mr. Gurney.—Is this a correct plan?—No, but it gives the point of view; it is incorrect in point of measure, but is correct in point of position.

Mr. Wood.—Are you acquainted with the hand-writing of governor Wall?—I am.

Look at the signature to those three letters, do you believe them to be his hand-writing?—The signature I believe to be governor Wall's, to them all.

Mr. Peter Ferrick sworn.—Examined by Mr. Fielding.

I understand you are a surgeon?—Yes.

Were you the surgeon of the garrison, in the year 1784, at Goree?—Yes.

Have you a recollection of the proceedings on the 10th of July in that year?—Yes.

Whereabouts were your quarters, with relation to the government house?—Very near it.

Did you see governor Wall in the morning of that day?—I do not recollect I did.

What time of the day was it, when you first saw governor Wall?—I think it was at evening parade.

You were at the evening parade?—Yes.

How came you there?—I was sent for.

Do you recollect about what time it was, when you were sent for?—About an hour before sun set.

Was the circle formed, before you arrived at that spot?—Yes.

When you first came into the circle, tell me, as well as you can recollect, the officers that were there?—The governor, captain Lacy, lieutenant Fall, lieutenant O'Shanley, and ensign Ford.

What passed, immediately upon your entering within the circle?—Armstrong was in the act of being punished, when I entered the circle.

Then you had not arrived before Arm-

strong was tied to the gun and was being flogged?—I had not.

No conversation, then, had taken place between you and governor Wall, or any other of the officers, with respect to any of the men, or with respect to Armstrong?—When I came—

Lord Chief Baron Macdonald.—Before you came, is the question?—No.

Mr. Fielding.—Was it communicated to you by governor Wall, for what purpose it was that you were sent for?—I do not recollect; perhaps it was; the soldier told me to come and see a punishment; I do not recollect whether the governor told me or no.

When you came into the circle, what passed?—I think, to the best of my recollection, governor Wall told me, that "that was a damned mutinous scoundrel, and he was going to punish him."

Did any thing farther pass between you and governor Wall?—No.

Did you see who were the persons inflicting the punishment?—Yes Negroes.

Did you observe the instrument with which the punishment was inflicted?—Yes; at the distance at which I stood, I observed it was a rope.

Was the punishment inflicted by one or more persons?—By a number of persons.

How many strokes were given by each of the men?—I suppose about twenty-five; that was the usual custom.

Did you attend to Armstrong while he was undergoing this punishment? did you look on?—I looked on.

How many lashes did he receive, while you were looking on?—I understood eight hundred; I did not count the lashes.

You were not there at the beginning?—No.

Can you tell what proportion of the lashes were given him, while you were present?—I cannot tell; very few I suppose.

Did you make any representations to the governor, or did any thing pass between you and him, during the continuance of this punishment?—Nothing more than I have told you.

Did the punishment appear to you either severe or otherwise?—Rather severe than otherwise.

Lord Chief Baron Macdonald.—You said you made no representation?—None.

Mr. Fielding.—Eight hundred lashes being inflicted with a thing like this, were the sufferings of the party extreme, according to your notice of him, as surgeon of the garrison?—I do not recollect that it was worse than the usual punishment, and he did not make more noise than the usual punishment excites.

Did you attend this man in the hospital, after the punishment had been gone through?—Yes.

How long did he live?—It was done on the 10th, and I think he lived till the 15th.

Did you attend him from day to day after

the punishment till his death?—Yes, twice a day.

What do you think was the cause of his death?—I have supposed from that time to this, that the punishment was the cause of his death.

Lord Chief Baron *Macdonald*.—By “supposed,” do you mean that it is your opinion?—Yes.

Mr. *Fielding*.—At the time when you were observing the infliction of the punishment did it occur to you that you were called upon, from your professional duty, to observe upon the state of the man, or the severity of the punishment?—Yes.

Did you make that observation to governor Wall?—No.

I must, therefore, take the liberty of asking you, why you did not make such a representation to governor Wall?

Mr. *Knowlton*.—Does your lordship think that it is a question to be put, why a man does not do his duty?

Mr. *Fielding*.—If the Court will give him an opportunity of explaining his conduct—the Court will hardly refuse it.

Mr. *Gurney*.—It is a question that we might ask, to be sure.

Mr. *Fielding*.—I think it is necessary for the sake of the army.

Mr. *Knowlton*.—But we are here for the sake of a gentleman, who is standing for his life.

Mr. *Fielding*.—And for the sake of governor Wall too.

Lord Chief Baron *Macdonald*.—I should like at present, and the judges agree with me, that if any fact is to be stated, in answer to the question—such as, for example, that he was violently pushed to do it—that the question may be put with the expectation of such an answer; but it must be understood, that no opinions or conclusions will be a proper answer to that question, and no reliance can be had upon them; but, for aught we know, it may be a fact.

Mr. *Knowlton*.—I feel your lordship's observation too sensibly to say any thing farther.

Mr. *Fielding*.—You said you did not arrive within the circle, till the man was undergoing this punishment; therefore I will simply ask you, if, during the course of that day, or at that time, you saw any appearance of disorderly behaviour, tumultuous or mutinous?—Not the smallest.

Did you know of any?—Not any; I never heard of any, till I heard it at the privy council the other day.

Were you near Armstrong shortly before the time of his death?—I waited him on the day on which he died.

Was his situation then such as to render it likely that his dissolution would soon take place?—The distance of time is so great that I do not recollect.

Do you recollect this man saying any thing to you?

Mr. *Knowlton*.—There is a previous question.

Mr. *Fielding*.—Can you, upon the best recollection, tell what proportion of punishment it was that he received, after you came within the circle?—I do not recollect that. I suppose he received about eight hundred altogether; but whether he had ten, or a dozen, or two dozen, before I came in, I cannot tell.

Was the greater part inflicted after you got there?—Oh! yes: I suppose not above a dozen or two before I got there.

Eight hundred lashes being given to a man with a rope's end like that, what degree of mischief do you think, as a surgeon, was likely to ensue, if it were inflicted upon any human being?—I never saw a man punished in that way before; and therefore had no experience; my answer must be blended with maturer knowledge of the business. I should say there was a chance he should die of it, because he has died.

Lord Chief Baron *Macdonald*.—The question is, what is your present opinion.

Witness.—My present opinion is, that there was a great chance of his dying with it; that was not the case always, for some of them lived.

Mr. *Attorney General*.—We cannot talk of the cases of other persons.

Mr. *Fielding*.—Can you give me any account of what is become of the other officers who were in the garrison at that time? what is become of O'Shanley?—Dead.

Mr. Ford?—I understand, dead.

What is become of Mr. Fall?—I understand dead.

What is become of Mr. Lacy?—Dead too.

What is become of Mr. Deering?—I do not know. I never saw him since he left the island with governor Wall.

You have never seen him?—If I have seen him in London, I have not known him, nor recollected him.

Do you think that punishment being inflicted with this rope, instead of a cat of nine tails, is more likely or not to produce more mischief, and if so, what is the proportion of greater mischief, you being a surgeon, I ask you, likely to ensue from this instrument being made use of?—That is a complex question.

Is that likely to produce more mischief than a cat, and why?—Because it bruises, and does not cut; and that deceived me at the beginning; the backs were bruised and not cut, and that I was not aware of.

You have observed that this will bruise more than the stripes of a cat?—Yes, and is consequently more dangerous.

If there are bruises occasioned by this instrument, is mortification more likely to ensue from that punishment being inflicted with this rope, than with a common cat of nine tails?—Certainly, but that is reasoning from experience; I did not know that before.

Then, as a surgeon, looking upon this in-

strument as likely by its bruises to produce more mischief than a cat of nine tails, I ask what your opinion must necessarily be of a punishment to the extent of eight hundred lashes being inflicted upon a human body; whether the effect is not likely to be attended with death?—It is.

When you attended this man, therefore, and you examined the state of his body, what were the appearances upon his back?—Mere black, a great deal of bruising, but very little cutting.

Immediately upon your viewing his back in such a situation, exhibiting these bruises to your eye, what was your judgment *then* of the likelihood of immediate mortification?—I do not well understand that question.

Lord Chief Baron *Macdonald*.—What appearances were there? was there a mortification? what was the consequence of this punishment?—I can scarcely describe that, that has slipped my memory. I know the outlines of it, but not the colourings of it. There was one particular circumstance, I believe, in the case of that man—that he passed blood constantly both by urine and stool; he had an asthma from the extraordinary absorption of the blood.

Do you mean by the blood being taken up into the lungs?—Taken up into the body, and circulated through the lungs again.

Then there was no mortification upon the back?—I do not recollect that.

How long had you been in the profession as a surgeon at this time, in the year 1782?—Two or three years.

What age were you then?—Three or four and twenty.

Mr. Peter Ferrick cross-examined by
Mr. Knowlys.

You were sent for, to witness the punishment?—Yes.

I think I heard you say, that at that time you yourself did not know that this was a dangerous thing to inflict punishment with?—No; I had never seen any thing of the kind done before.

You are a medical man?—I am.

And at that time, with all the medical experience you had, you were not aware that this was a dangerous thing to correct with?—I had no medical experience with respect to ropes.

But, from the judgment you could form of what the human body is capable of sustaining, you did not at that time imagine that that was a dangerous thing to correct with?—I believe my imagination would have been of no service, because it would have been dangerous to have given it.

My question was, whether you apprehended that to be a dangerous thing to correct with?—I said before, I did not.

A military man was not so likely to know what would affect the human body as you, of

course. When did you see *Armstrong* first, after this?—I do not recollect exactly, but I suppose he was not dressed till I saw him; I saw him that night.

We understand this is a very unhealthy climate?—It is so.

Is not the circumstance of voiding blood both in stool and in urine, a common disease of the country?—Not in the urine; I believe that never is a disease of the country.

But by stool?—Very frequently.

You had not then more than three years experience as a medical man?—I do not recollect; three or four years.

Could you at that time pronounce with any thing like certainty, that this correction was the occasion of his death?—I have been so certain of it, that I have never doubted of it, from that moment to this.

Did you open the body?—No; that is not a country to open bodies in such a situation as this.

The body was not opened to see the state of it, neither head nor intestines?—No.

There was no opportunity of examining the kidneys?—I do not suppose the kidneys were hurt in the least; the passing blood appeared to me to be only from the absorption of the blood.

In this climate, small vessels are apt to burst, and the blood to be absorbed?—I mentioned before the blood must be extravasated.

I take it, at this time you would have forbidden the use of strong liquors to this man, after he had undergone his punishment?—Certainly.

If he had without your orders taken them, might not that have rendered that correction fatal, which otherwise would not have been so?—That is possible.

It would have been a very dangerous thing?—Certainly.

Mr. Peter Ferrick re-examined by *Mr. Fielding.*

You attended this man, day by day, to his death?—Yes.

Was there any thing, from which you could conclude that he had had any liquor given to him?—None that I know of: there was a general order to let no spirituous liquor into the hospital.

Mr. Justice Rooke.—What was this man's state of health, before he received this punishment?—I believe he was in so good a state of health, that he was never in my hands at all.

William Rosser sworn—Examined by *Mr. Abbott.*

Were you at *Goree* in the year 1782?—Yes.

What was your situation?—I was in the hospital, assisting the surgeon.

Do you remember some persons being

brought to the hospital, on the 10th and 11th of July?—Yes.

They were brought there, after having received punishment?—Yes.

Did you attend upon them in the hospital?—I did.

During the whole time that they were there?—Yes; I attended them the whole time they were there.

Do you know the names of all of them?—I cannot recollect all their names at present.

I do not know whether you recollect one in particular of the name of Armstrong?—Yes, I recollect Benjamin Armstrong well.

Was he brought into the hospital after receiving punishment?—He was.

You attended him till his death?—Yes.

Did you ever learn from him before his death, that he expected he should die?—Yes; he said that, the minute he came into the hospital, to the men that brought him in.

What did he say?—He said he had been punished, and that he should die, by order of governor Wall, by black men, without a court martial; that was what he said when he was brought in first.

Did he, on any other occasion, whilst he was in the hospital, express an opinion that he should die?—None to my knowledge; that I cannot recollect at present.

Did he afterwards repeat any farther circumstances relating to this?

Mr. Justice *Lawrence*.—You have not sufficiently ascertained that the man, at the time he said this, really thought he was not likely to live.

Mr. *Abbott*.—Did Armstrong grow gradually worse and worse after he came to the hospital?—Yes, he did.

Had he the appearance of a person likely to die?—His back was exceedingly bruised and swelled, and as black as a new hat.

I think you told me he continued to grow worse and worse; was that so?—Yes.

Mr. *Abbott*.—Did he, at any time afterwards, intimate any hope that he should recover?

Mr. Justice *Lawrence*.—Did he say any thing, at any other time, as to whether he thought he should recover, or should not recover?

Witness.—I do not remember any thing of that on any other occasion.

Mr. *Abbott*.—Did he appear to you to be in a dying state?—He appeared to me to be so.

How long before his death did he appear to you to be a person that would die?—He lived but a short time afterwards, I cannot tell exactly as to the time; he continued to grow worse and worse, so that there was never any hope of him from the time that he came in.

How short a time before his death did you hear him say any thing relative to his punishment, and the cause of it?—I do not recollect any thing he said, after the time he was brought into the hospital.

William Rorer cross-examined by Mr. *Gurney*.

He did not drink any spirits in the hospital with your knowledge, I suppose?—No, except the garrison allowance that was brought in.

How much was the garrison allowance?—Half a pint of brandy, or a pint of wine.

He had his garrison allowance whilst he was in the hospital?—Yes, either half a pint of brandy, or a pint of wine each day.

That he had every day?—Yes.

That he drank?—That I cannot answer for.

He had it?—Yes, and he might drink it.

Did you ever see him leave any?—Indeed I cannot tell, for I did not examine his bottle.

For any thing you know, he did drink it; he had it if he chose?—He had it if he chose.

Had you any reason to see, or to observe, that he hurt himself by drinking any quantity of spirits after he came to the hospital?—I had not.

Mr. Justice *Lawrence*.—Did you at any time see him drink any spirits?—I cannot recollect.

Mr. Justice *Rooke*.—Had you any order not to let him drink spirits?—I had not any orders not to let him drink his garrison allowance, for that came into the hospital, and he might do as he thought fit with it.

John Butler sworn.—Examined by Mr. *Attorney General*.

Were you present, and a part of the corps at the island of Goree on the 10th of July, 1782?—I was serjeant major.

From the best observation you were able to make of what passed in the garrison on that day, was there any mutiny, or appearance of mutiny there?—There was not.

Was there any riot or disturbance of any sort to your knowledge?—Not in the least.

Have you any reason to know or believe that there was any court-martial held upon Armstrong upon that day?—There was not.

John Butler cross-examined by Mr. *Alley*.

Were you at the governor's house in the morning, when the soldiers went there?—I was not.

Then you cannot tell what the conduct of the soldiers was there?—No.

Did you attend at the time the soldiers were punished?—I did.

Were you one that formed the ring?—Yes. There were some drums collected in the ring, were there not?—No.

John Butler re-examined by Mr. *Attorney General*.

Was not the drum beat by the drummer in the regular way at the time of the roll-call?—Yes it was.

Have you any reason for knowing that the drummers did not do their duty on that day

the same as on any other day?—Not in the least.

Richard Besson sworn.—Examined by Mr. *Solicitor General*.

Were you one of the garrison in Goree under governor Wall?—Yes.

Do you remember, the day before the governor left the island, some of the soldiers going to the governor's house?—Yes.

What were you?—A serjeant of artillery at that time.

You remember some soldiers coming to the governor's house?—I was told so.

Did you do any thing that you were told was by order of the governor, which you afterwards presented to the governor?—Yes.

What were you desired to do, as by the governor's orders, which, when done, you communicated to the governor?—The day before governor Wall left the island of Goree, there were several of the soldiers of the African corps went to him, to desire him to settle with them for short allowance of provisions; after that, they came to me, and told me it was the governor's orders that I was to make out an account what was due to each man.

Did you make out the account?—Yes, I made out an account.

To whom did you deliver it?—I think I delivered it to governor Wall.

You think! Are you certain?—I delivered it to governor Wall.

Do you recollect what the Governor said upon receiving it?—I do not think there were any questions asked, nothing of consequence.

Did he take it from you?—I think he did.

You were not yourself upon the parade in the evening, I believe?—I was not.

Lord Chief Baron *Macdonald*.—what time of day was it, when you delivered the account?—It might be about twelve or one o'clock.

Was there any short allowance due to you, at that time?—Yes, the same as the rest of the garrison.

Has that ever been settled with you?—No.

Richard Besson cross-examined by Mr. *Knowllys*.

You did not go with the party that went to the government house?—No.

Of course you did not see what passed there?—No.

You held no conversation with the governor about this business at all?—No.

Merely delivered a paper to him?—Yes.

John Clarke sworn.—Examined by Mr. *Plumer*.

Were you at Goree in the year 1782?—Yes.

What were you?—A private in the African corps.

Do you remember being there on the 10th of July, the day on which Armstrong was punished?—Yes.

Before that punishment took place, or

afterwards, did you know of any mutiny or disturbance in the garrison?—I did not hear of any mutiny; there were some men gathered together, and were going to Mr. Deering, to ask their rights that were due to them, and serjeant Armstrong was heading them.

That was in the morning?—Yes.

Were you with them?—Yes, at that part I was.

Was that the first or the second time?—The first time.

Did you hear what passed between the governor and them?—I did not; when we had got against the gate going to Mr. Deering, the governor called serjeant Armstrong; he went, and I did not hear what passed between them.

Did you in fact go to the commissary's?—We went back again.

Did the men immediately go back, or make any objection?—I did not hear any objection at all.

Did they go back as soon as they were ordered to go back, without any objection at all?—Yes, I heard no objection about it.

You were not with the party the second time?—No, I was not.

Mr. Justice *Lawrence*.—This was the second time.

Lord Chief Baron *Macdonald*.—Are you sure whether this was the first or the second time?

Witness.—I am sure it was the first time.

Mr. *Plumer*.—Were you upon duty afterwards in the course of the day?—No.

Were you at the barracks?—Yes.

Was there any disturbance or mutiny there?—I did not hear any at all.

Between that and the time Armstrong was punished, was there any mutiny or disturbance of any sort whatever?—I neither saw nor heard any.

Were you among the rest of the troops?—Yes, I lay in the barracks.

Were they quiet and orderly?—I did not see any thing amiss in them.

Do you know, in fact, whether the short allowance was settled with them?—I cannot recollect.

Have you ever been settled with your short allowance?—I have forgot whether I have or not; it is so long ago.

John Clarke cross-examined by Mr. *Gurney*.

The first time you went up to the commissary's house, who headed you?—Armstrong.

How many were there of you?—I really cannot say; there might be twenty or better.

Perhaps thirty?—Very likely thirty.

You went to ensign Deering's house?—Almost there; but serjeant Armstrong was called over by the governor, and what passed I cannot tell, as they were at a distance from us.

What time of day was this?—It might be about nine or ten o'clock.

H

The governor and Armstrong talked together?—Yes.

How did you go? in a crowd, or did you walk in rank?—Walked in rank.

And Armstrong at their head?—Yes.

What passed between the governor and him you did not hear?—No.

Who gave you the word of command to march back again?—Serjeant Armstrong.

And upon that you marched to the barracks?—Yes.

How long was it before they went up again, two or three hours was not it?—Yes, or better.

You did not go along with them?—No, I saw them go.

Who headed them the second time?—Upton.

Was Armstrong along with them the second time?—I cannot say whether he was or not.

How many were there the second time?—I do not know; I did not go to see them.

They went out of the barracks whilst you were in the barracks?—Yes, but what quantity there were I cannot say.

Did you see them come back?—No, I did not.

Do you know what became of the cats that day?—No.

You did not see any handed about the barracks in the morning?—No.

Were the men all sober that day?—I did not see any in liquor.

That you are sure of?—I am sure I did not see any body in liquor.

Were you sober yourself?—Yes, that I was.

You are sure of that?—Yes.

And you did not see any body else in liquor?—No.

How far are the barracks from the governor's house?—About three hundred yards.

John Clarke re-examined by Mr. *Plumer*.

The gentleman asked you whether serjeant Armstrong ordered you to go back; what did he say after he had been with governor Wall?—He desired us to go back again, and said the governor would see us settled with.

David Powell sworn.—Examined by Mr. *Wood*.

Were you a private in the African corps, in the year 1783, in the Island of Goree?—I was there.

Were you there on the 10th of July, 1783, the day before the Governor went away?—Yes.

On that day did you observe any mutiny, or mutinous disposition in the garrison?—I did not.

Do you know of their going up to the commissary Deering, to get settled about their allowances?—Yes.

Did you go up with them?—Yes, once.

Which time?—The first time, to the best of my knowledge.

What passed?—It is a long time past; I cannot recollect; I was rather behind.

Did you see Governor Wall?—I cannot say whether I did or no.

Was Armstrong with you then?—To the best of my knowledge he was.

Did you see any thing pass between him and the governor?—No.

Did you go back again then?—Yes, directly.

What made you go back?—To the best of my knowledge, the orderly serjeant spoke something to some of the men.

And upon that you went back?—Yes.

Lord Chief Baron *Macdonald*.—You did not hear what was said?—No.

Mr. *Wood*.—Did you behave in any riotous or mutinous manner at that time?—I did not see or hear any thing.

Did you see or hear any thing riotous or mutinous between that time and the time when Armstrong was punished?—I did not.

[Mr. *Charles Peace*, from the Secretary of State's Office, produced a letter, signed J. WALL, dated the 26th August, 1782, addressed to the Right Honourable Thomas Townsend, Secretary of State; and a return of the State of the Garrison of Goree, on the 11th of July, 1782, inclosed in the letter.]

Lieutenant *Poplett* deposed that they were in the hand-writing of the prisoner.

[*The letter was read.*]

Mr. *Attorney General*.—I read this letter, to show what it does not contain, that there is no mention of any mutiny.

[*The return of the Garrison of Goree was read.*]

Mr. *Attorney General*.—There were two officers who came away at that time, major Phipps, and ensign Deering.

[A Proclamation for apprehending Joseph Wall, 8th March, 1784, was read. Mr. *Charles Peace* also produced a letter, dated London, 5th October, 1801, addressed, Right Honourable Lord Pelham, signed J. WALL, and another letter, dated London, 6th October, 1801, addressed Right Honourable Lord Pelham, signed J. WALL.]

Lieutenant *Poplett* deposed that they were the hand-writing of the prisoner.

[*They were read.*]

Mr. *John Augustine Oldham* sworn.—Examined by Mr. *Solicitor General*.

What situation do you hold?—Deputy judge advocate general; deputy to air Chas. Morgan.

Are the proceedings of courts-martial returned to your office?—Certainly, of general courts-martial.

Have you made any search in your office,

for the proceedings of any court-martial that might have been returned to be upon Benjamin Armstrong, in the year 1782?—I have made diligent search, both for that year and a considerable number of years prior to it, and have not been able to discover any such proceeding.

Mr. J. A. Oldham cross-examined by Mr. Knowlys.

You speak of the proceedings of general courts-martial being returned?—Yes.

The proceedings of field courts-martial, or drum-head courts-martial, never are recorded or returned I believe?—Never.

Mr. Solicitor General.—Are trials for mutiny returned or not?—They certainly are; mutiny is a capital crime, and of course triable by a general court-martial.

Mr. Knowlys.—Where a mutiny is made the subject of inquiry by a general court-martial, it is returned; but if a mutiny is to be repressed at the instant, and a field court-martial is held, and a sentence passed, is that ever returned?—Never, where the punishment is short of death.

Mr. Attorney General.—A drum-head court-martial cannot punish with death.

Mr. Gurney.—Certainly not.

Mr. Attorney General.—It is not a trial, but something that the necessity of the case overlooks. My Lord, we have closed our case on the part of the Crown.

Lord Chief Baron Macdonald.—Prisoner, now is the proper time for you to offer any thing you may think proper in your defence.

PRISONER'S DEFENCE.

I shall endeavour to state to your lordships, and the gentlemen of the Jury, in as brief a manner as possible, the real facts of the case.

Finding my health in a very precarious state, I determined, in July, 1782, to give up the government of Goree, and return to England. On the 10th of July, I rather think the 11th, but I will confine myself to the 10th, I prepared to embark on board a ship for England, to return to Europe; in the morning of the 10th, I had a certificate from the officers of the garrison, that the arrears were cleared off, and perfectly satisfied—that the account was settled. On the 10th, about eleven o'clock in the morning, all the men of the corps that were off duty, came to the government house; I went out to them; they made a demand of short allowance of provisions that was due to them from captain Adams; I explained that business to them so fully that I had not a right to pay it, that the men, in a very short time, dispersed, and returned to the barracks. About two o'clock in the day, they returned again, very much intoxicated with liquor, and insisted upon having the demand complied with. I expostulated with them for a length of time to no effect, and ordered serjeant Armstrong to

march the men back again to the barracks; he was then in the front, standing with his hat on; he refused, and said "he would be damned if he would, until it was settled," or "the demand complied with." I ordered the whole of them to face to the left, and march off to the barracks; the answer to that was, "they would be damned if they would not immediately break open the stores, and satisfy themselves." Finding them seriously bent upon proceeding to extremities, and having no resource if they had done so, nearer to me than England, I begged an hour or two to consider of it, and that I would give them an answer. They hesitated for some time, but at length they acquiesced, upon condition that I was not to leave the island till the business was settled. Armstrong then marched the men off without taking any farther notice, shouting and making a very great noise, and saying that they had gained the victory.

When I returned into the government house, I sent for the officers of the corps; and in the interval, till the officers arrived, I walked out and was proceeding to the main guard, to know the state of the garrison—to know if the main guard were in support of those that were off duty. On my way, I met Armstrong, Upton, Patterson, and several more, who told me that I had promised not to quit the island till they were satisfied, and that I should not go to the waterside until then. When I returned to the government house, I found the officers there, who all agreed that immediate punishment was necessary to put a stop to the mutiny. I ordered lieutenant O'Shanley to go to the drum-major, to desire him to have cats ready when called for. Lieutenant O'Shanley returned, and reported to me that the drum-major had told him that the cats had been destroyed, and that I had best get away as soon as I could, for that the men would not suffer any punishment to be inflicted upon any one of them; inasmuch as they were all agreed.

Captain Lacy then proposed punishing them by the linguist and his assistants, which was acquiesced in by the other officers; from the time of the soldiers departing, it took up some time, till about four o'clock, when I told captain Lacy that I would go down to the main guard, and have the mutineers brought upon the parade, and for him to come down with the linguist and his assistants as soon as he found the ring formed, that the people at the barracks might not be alarmed at knowing they were going to receive punishment.

Immediately upon the parade being formed, the officers arrived, and the circle was formed; captain Lacy, lieutenant Fall, lieutenant O'Shanley, and Mr. Ferrick, the surgeon, were on the parade in a very short time after. When I came upon the parade, I asked the men if they had any claim to make upon me. A man, whose name I do not recollect, came forward and said he had, of the short

allowance money that was due to him, from governor Adams. I then called upon Armstrong, he having no claim whatever, to account for his mutiny; when Armstrong was standing forward, ensign Ford came running to me from the main guard, to inform me that the man that was confined was breaking from his arrest and was coming to the parade. I asked lieutenant Ford if he could not confine him; he told me he could not; that his guard would not obey him. Seeing there was no time to be lost to put a stop to it, I went off myself to the main guard, and left captain Lacy in charge of the parade. Upon the soldier seeing me coming, he retired behind the guard that was turned out, in a manner as if he expected to be supported by the guard; but upon seeing me coming up to him, he was retiring, and I forced him into the guard house. I was following him into the guard house to see him well secured, when the sentry at the door clapped his bayonet to my breast, and desired me to keep off, saying that I should not enter. I struck the bayonet out of his hand, and put him prisoner with the other; and after having reprimanded the guard for disobedience of ensign Ford's orders, I returned to the parade. I ordered the artillery to be on the parade this evening, as I was afraid of the African corps; it was a circumstance which never happened in the garrison—the artillery being upon the parade at a punishment of the African corps—before.

Upon my coming to the parade, I ordered captain Lacy, lieutenant Fall, and lieutenant O'Shanley, to form a court-martial. Mr. Ferrick was at this time on the parade. Armstrong was brought forward, and charged by me with the mutiny; but as I did not choose to take away their lives, I chose to try them by a regimental court-martial; and indeed I had it not in my power to form any other. Whilst captain Lacy and lieutenant O'Shanley were trying Armstrong, I was outside the circle; captain Lacy came to me and reported that the court had sentenced Armstrong to receive eight hundred lashes. I returned into the circle, and told the prisoner the sentence of the court-martial, which was, that he was to receive eight hundred lashes, to be inflicted by the linguist and his assistants, with a small rope's end, which is a small cord that was produced upon the parade by the linguist, and shewn to the surgeon, before Armstrong had felt it. The surgeon approved of the cord, by saying it was not so bad as a cat of nine tails. The punishment was then inflicted upon Armstrong;—there was no other mode of punishment in the garrison;—the African corps never had a halberd delivered to them; tying the person to be punished to the timbers of a six-pounder, was the usual mode.—Armstrong received his punishment, and walked away with little appearance of concern, and with very little appearance of punishment. I beg to know,

my lord, if I am to go farther with respect to the other people?

Lord Chief Baron *Macdonald*.—No, we have only this single case before us at present.

Prisoner.—Armstrong, on the evening he was taken to the hospital, drank spirituous liquors so as to be intoxicated; the day after this punishment, the sickly season advancing fast, I thought it was necessary for the preservation of my life to get away; the climate being very bad, and I having been for a length of time before very ill. I arrived in England some time in August, in the same year. Upon my arrival at the secretary of state's office, I found there had been a number of charges exhibited against me by captain Crawford, then a lieutenant in the African corps, and Mr. ——. These charges, upon trial about ten months after, appeared to be totally groundless; and captain Crawford was reprimanded highly by his majesty, for presuming to bring such charges against me; many of the other charges were found groundless, and very much exaggerated. As soon as the inquiry into these charges was over, I went down to Bath, and heard nothing farther, either of the punishment of the men, nor any thing concerning them, until two messengers came down to me at Bath. The man who was the chief messenger, told me he came down on a message to me from lord Sidney; I asked him, in the presence of two people, if he had a warrant; he said, he had not; yet I suspected that he had a warrant. I told him, "I will comply with my lord Sidney's command immediately." I sent to the Bear Inn for a post coach and four horses, and I and the two messengers got into it quickly; we travelled about three miles out of town, and I stopped the coach, as I had occasion for a person that was then in Bath to be in town, and I sent for this person; we then proceeded on our way to London. I paid the expences of the carriage; I paid the dinner bill at Marlborough, and when we came to Reading, I ordered supper in the usual way. I did not think it was absolutely necessary for me to tell the messengers I was going away. I left Reading about eleven o'clock at night; nor did I know absolutely what the charges were. I did not know whether they called it an arrest or not, when the business took place; and from the persecution I had met with before, I thought it was dangerous to appear at that time; for all the newspapers were full of false paragraphs, some of them asserting that I had fired men from the mouths of cannon; others, that I had additional means of punishment added to the ropes with which the men were punished: it terrified me so that I could not face it, till I thought men's minds were cool to listen to the truth without prejudice. This is all that I have to say. I am here now to answer for it, and I commit myself to the protection of your lordships and of the gentlemen of the Jury.

EVIDENCE FOR THE PRISONER.

Mrs. Harriet Lacy sworn.—Examined by Mr. Knowlys.

You are the widow of captain Lacy, who succeeded Mr. Wall in the government of Goree?—I am.

Were you in the island of Goree the day before Mr. Wall left his government?—I was.

Where was it that you resided on that day?—I was in the governor's house.

Did you observe any thing particular that passed on the morning of that day among the soldiers? and, if so, state every thing you observed?—The soldiers came in the morning in a body to demand short allowance money, due to them from governor Adams.

Governor Adams, I believe, was the gentleman who preceded Mr. Wall in the command?—He was.

How many do you think they might be in number?—The chief of the African corps; seventy or eighty.

Did you know the person of serjeant Armstrong?—I knew his person perfectly well.

Did he accompany the soldiers, when they came to make this demand?—He headed them.

Where did they stop?—Opposite the government house.

Did you hear or see to whom those persons addressed themselves? to whom they spoke?—They spoke to governor Wall, and threatened him.

Lord Chief Baron Macdonald.—What did they say?—They swore, that if the governor did not satisfy their demands, they would break open the stores and satisfy themselves.

Did this pass the first time you saw them?—The second time; they came twice.

Mr. Knowlys.—Relate first, all that passed the first time they came?—It was about nine or ten o'clock when they came first of all.

Relate first what passed when they first came?—The governor went out and spoke to them.

What do you imagine was the number when they first came, as near as you can guess?—There was the chief of the African corps.

Lord Chief Baron Macdonald.—When you speak of the number being seventy or eighty, do you mean the first time or the second?—The second time; there were not so many the first time as the second.

Then all you have been hitherto saying relates to the second time of their coming?—Yes.

Mr. Knowlys.—Relate all that passed the first time, first?—The governor went out to them, and desired them to go quietly to their barracks, and give him time to consider of it.

Lord Chief Baron Macdonald.—Are you sure that was the first time?—The first time.

Mr. Knowlys.—Am I to understand that he communicated this to them with his own

month, not by any messenger?—He spoke to them in person.

Lord Chief Baron Macdonald.—Who headed these men, the first time?—I do not know; but the second time I perfectly recollect it was Armstrong.

Mr. Knowlys.—But, whoever they were, they addressed themselves to the governor, and he answered them?—Yes; they addressed themselves to the governor, and demanded the short allowance due from governor Adams.

Do you recollect what he said to them?—I think it was, to return to their barracks, and give him time to consider of it.

Then he did this in person, not by any messenger?—No, in person.

Did they go away to their barracks at the desire of their governor?—They did.

After they had gone this first time, did you see them come again?—I did; in about an hour and a half's time they came again.

In what way did they come then, and to what number?—They came headed by serjeant Armstrong, Upton, and Patterson; and there were the chief of the African corps, to about seventy or eighty in number.

In what way did they come?—They came in a most riotous and mutinous manner.

Were they apparently sober?—From their manner one would not suppose that they were.

Did you see them before they reached the government house?—I saw them at the time they came there.

State every thing you saw pass?—I heard them swear, that if the governor did not satisfy their demands they would open the stores and satisfy themselves.

Where was the governor, at the time they uttered this expression?—He was speaking to them.

How came he to speak to them?—He went out to them.

How came he to go out to them?—I heard what passed from the soldiers.

At the time they came up, was the governor outside the government house, or did he go out to them?—He went out to them.

Did you hear the governor say any thing to any particular person in this company? you said Armstrong was one amongst them?—Yes.

Do you recollect Armstrong saying any thing to the governor, or he to him?—I heard Armstrong swear, that if the governor did not satisfy his demands, he would open the stores.

What else passed between Armstrong and the governor?—After the governor spoke to him, he went off with the men, shouting and making a great noise, in every state of mutiny.

Were any orders given by the governor to Armstrong?—I do not know.

Did the governor consent to their staying there in that way?—Certainly not.

What did he say to them about their staying there?—I cannot repeat what the governor said; I heard them behave in a mutinous manner.

Did the governor say any thing to them about their staying there, or departing from that place?—He ordered them to depart.

When the governor ordered them to depart, what was the answer made by Armstrong or any of the company?—They behaved in a riotous manner.

What answer did they make to him?—They would not for some time; they declared they would break open the stores, and supply themselves.

That was the answer they made to the governor's orders to depart, was it?—It was.

Was it generally known in the island that the governor was going to depart?—It was.

Did Armstrong, or any of the company with him, say any thing about his leaving the island at that time?—They were I believe very mutinous for some time before.

Did they say any thing about his departing or not from the island?—I do not know. They said, they would not let him leave the island till they were satisfied.

Who was the spokesman, upon this occasion?—Armstrong, Upton, and Patterson, were the three spokesmen.

Did they express their determination in a peaceable and quiet manner, or the contrary?—They spoke it in a most threatening manner.

Was it in an alarming manner?—Indeed it was.

From the conduct and manner which the people observed towards the governor at the time, did you yourself at that time apprehend mischief?—Upon my word, I did.

Upon your oath?—Upon my oath, I did.

How long did they continue assembled in this way before the house, conducting themselves in this way towards the governor?—It was some time before the governor could appease them and that they went away, it might be a quarter of an hour; I cannot speak precisely to the time, at this great distance of time.

Lord Chief Baron *Macdonald*.—If I understand you, they went away declaring that if a settlement was not made with them, they would break open the stores?—They did.

Mr. *Knowlys*.—When they left the government house, did they go away quietly and orderly?—They did not; there was shouting, hallooing, and threatening the governor.

After they had gone, what did the governor do?—He sent lieutenant O'Shanley to the officers who were off duty.

Was your husband, who succeeded in the government, one of those officers?—He was one of the officers off duty.

Was lieutenant Fall off duty at that time?—He was.

Did Mr. Lacy and lieutenants Fall and O'Shanley come to the government house,

in consequence of that message which was sent to them?—In consequence of that message, they came to the government house.

When the officers came, what passed?—The governor told them of this mutiny.

Lord Chief Baron *Macdonald*.—Were you present?—Yes; I heard the governor relate it to the other officers.

What was agreed to be done, in consequence of the report of governor Wall?—It was finally agreed, not to confine the men then, for it would increase the mutiny; but to point out the ringleaders, one by one, and try them by a drum-head court-martial.

That was the result of the consultation of the officers with the governor?—Yes.

Was there any inquiry directed respecting the cat-o-nine-tails?—Yes. The governor then sent lieutenant O'Shanley to the drum-major, to have a cat-o-nine-tails ready prepared when called for.

What report was made by lieutenant O'Shanley, respecting the cat-o-nine-tails?—On his return, his report was, that the drum-major said that all the cats had been destroyed in the morning, and that the governor had better get away from the island, as soon as he possibly could, for he was sure not one of the men would be punished.

That was the report of lieutenant O'Shanley?—It was.

Upon that report being made to the officers and the governor, what was resolved to be done, and who proposed it?—Captain Lacy, my husband, proposed to the governor, it would be better to have the men punished by the linguist and his people.

Was any reason given, why the linguist and his assistants should be the persons to be employed, upon this occasion?—As the cats were all destroyed, there was no other resource, I suppose.

What was the reason, or was there any reason assigned, for employing the linguist and his people?—I suppose the general mutiny.

Did you hear what was the reason assigned?—I heard no reason, but that proposition of captain Lacy's, which was finally agreed upon by them.

Was any thing said respecting the drummers by them?—It was reported they were in the mutiny.

Lord Chief Baron *Macdonald*.—Did you hear Mr. O'Shanley report that the drummers were in the mutiny?—Yes.

Mr. *Knowlys*.—Was that then finally agreed upon?—Finally agreed upon.

Did you see the officers afterwards leave the government house?—I did.

To what part did they go?—They went down to the parade.

Where was it proposed this drum-head court-martial should be held?—The governor said the trial must take place on the parade, and he went himself to see about it, and desired captain Lacy to have every thing prepared for the trial.

Did the governor leave the officers in the government house, when he went out?—He left them in the government house, and went down himself to prepare for the trial; captain Lacy desired them to have the linguist ready, and he himself would go down and prepare the parade.

I do not know whether you saw Armstrong after that?—Not after that.

I imagine you did not see any thing beyond their leaving the house to go to the parade?—I saw the linguist come to the government house, and depart from thence with captain Lacy, lieutenant Ford, and lieutenant O'Shanley.

Agreeably to the directions which the governor gave?—Yes.

You saw no more of it after that?—No.

Mrs. Harriet Lacy cross-examined by Mr. Attorney General.

You made a pretty long stay at the government house that day?—I did.

By your own account you were there by nine in the morning, staid there all the time the officers were there, and did not quit it till about six in the evening?—I considered the government house as my own; previous to the governor's departure, I took possession of it.

You and your husband had removed from your own house to the government house, had you?—There were many things in the government house which I took possession of, and I was there the whole day.

You did not go home from thence? you continued there?—I did not; I continued there.

You have known the governor ever since he has been in England very well?—Not ever since: I met the governor accidentally.

You are in the habit of visiting him here?—I often meet Mrs. Wall.

You have come very often when Mrs. Wall was not here?—I suppose I have.

And staid late here?—I have not; I very seldom went.

I am asking as to this place in which we are standing; have not you come here to meet Mr. Wall?—I have.

Have you never come at times when you knew Mrs. Wall would not be here?—I have.

I am sorry to put the question to you; have you never staid here all night?—Never.

You have not?—I have not.

You abide by that answer?—I do.

You say that the demand was made for arrears in the time of governor Adams?—I do.

There were no short allowances, I take for granted, that had occurred in the time of governor Wall?—These are questions I am not obliged to answer you; I have said the truth.

You say you are not obliged to answer that question, whether there were not short al-

lowances in the time of governor Wall?—There were no short allowances in governor Wall's time; it was in governor Adams's time.

The garrison had never been put to short allowance in governor Wall's government?—Not to my knowledge.

Do you think governor Wall or you are most likely to know that fact? do you mean to say that you do not know, that the garrison for many months was put upon short allowance, in the time of governor Wall?—I declare I do not know it.

And you never heard of any short allowances, but what had occurred in the time of this Adams?—Never.

How long had Adams been gone away?—I cannot tell that.

Were not you there at the time Adams was governor?—I was not.

How long had you been there?—About a year after governor Wall.

Then you would represent, that the people were quarrelling with governor Wall for arrears which did not become due in his time, but became due in the time of his predecessor. Do you mean to say the demand made was for the stale arrears in Adams's time, with which that gentleman had nothing to do, and not for the arrears in commissary Deering's time?—I have said all I know, and I say nothing more.

Then you do not know of a complaint of any of these men respecting arrears which had occurred, and which were detained from them by Deering the paymaster?—I do not.

You heard the conversation between Armstrong and governor Wall, did you?—I did.

Was there nothing mentioned in that conversation about the arrears that were demanded from Deering, who was to depart the next day?—Nothing more than I have said.

You have said nothing about Deering?—I know nothing about Deering.

Then you did not know that there was a demand made of arrears due from Deering?—No, I did not.

Was not Evan Lewis the orderly serjeant with the governor that day?—No.

Do you know such a person?—Upon my word, I do not know that I should know him if I saw him.

Evan Lewis, if I mistake not, had been on the island before you came, all the while you were there, according to his statement, and sometime after; was he not orderly serjeant on that day, accompanying the governor, and within the house during the whole of the day? Do you mean to say you do not know his name?—He was not orderly serjeant on that day.

Then you assume that you know him, and know who was orderly serjeant that day?—I do.

Who was orderly serjeant that day?—To the best of my recollection Carney.

You know ensign Deering?—I know him.

He is alive, is he not?—I do not know whether he is or not.

How lately have you seen him?—Never since I came from abroad.

Have you not heard, upon your oath, from governor Wall that he is now living?—I believe he is living.

Do you happen to know where he is?—I do not indeed.

You have not seen him, but you know from governor Wall he is living. Was he paymaster at the time governor Wall was there?—Upon my word I do not know.

Was he commissary?—He was, I believe.

One Carney was the orderly serjeant for that day?—He was.

You are sure that no person of the name of Evan Lewis was. Were there two orderly serjeants, then, on that day?—No; I never knew any more than one orderly serjeant.

Was there a corporal acting as orderly serjeant?—I do not know.

You do not know of any more than one, and that was Carney?—Yes.

Where were you at the time you heard all these conversations? at nine in the morning, when the men came first, and at about an hour and a half afterwards when they came again, were you out of the door standing amongst them, or where were you?—I was in the governor's house.

At what distance were these men, whose language you heard so distinctly?—About twice as far as from you to me.

What is the situation of the house? it is quite flat, I suppose, and level from the house?—No it is rather raised up.

Are there any steps before the house?—There are steps.

Is there any court yard?—There is.

What is the size of that court yard?—You put me to very close questions; it is a long time since I was there.

Lord Chief Baron *Macdonald*.—Give us some idea of it; is it as large as this court?—No; about as large as the circle we are in.

Then it is not anything like so large as the whole of the court?—No.

Mr. *Attorney General*.—The court is between the house and the iron gates?—Yes.

Your windows were open?—They always have the windows open in that quarter.

And you were within the house, and these men were speaking to the governor at some distance?—The governor went out and spoke to them at the gate.

And you overheard every word that was uttered?—Every word.

Did Armstrong come up, the first time?—I do not recollect he did, the first time, but he came up the second.

And poor Upton and Patterson happened to be the men that came up?—Yes.

And every one of these happened to be the men that swore; every one used the threat he should not go off the island till they were

paid; and that if he did not satisfy their demand, they would break open the stores and satisfy themselves?—They did, as I shall answer at a higher tribunal than this.

Each speaking for himself said that they would break open the stores, if he would not satisfy them?—Yes.

It was not the language of one ringleader speaking for the rest, but each speaking separately repeated the same threat?—Yes.

And so loud, that you heard distinctly each of them severally repeating these words?—Certainly, I did.

You were present, you say, at the consultation of the officers?—I was.

Was there any other lady in the house but you?—No.

In the same room with them all along?—Yes.

Whilst that discourse was about cats, you were in the same room?—I was.

You know Deering, and that he was commissary?—He was.

And you never heard any thing suggested, that any money was due from Deering to them?—Never.

Did you in point of fact ever make an affidavit with your husband upon this subject?—I do not recollect that I did.

Your husband was in England after governor Wall's return?—I should not be surprised at any thing that my husband did at the time; for he unfortunately had a coup de soleil, and after that he might.

Having asked you whether you made any affidavit; if your husband made any affidavit upon the subject, he made it under the influence of a coup de soleil?

Mr. *Knowlys*.—I submit to your lordship that in this case it is not in the power of any body at present to speak of any affidavit the husband made; or whether he made any. Whatever this lady has said is evidence; but what the husband has done is not evidence.

Mr. *Attorney General*.—The gentleman has correctly stated his objection, and nothing fails him but the fact. I had not asked her any question but this, whether she ever made an affidavit with her husband; I have not asked if her husband had made an affidavit, and to the contents of it. But she said that, in order to parry what she supposed was a question I might afterwards put to her.

Mr. *Knowlys*.—Asking whether she made an affidavit with the husband, and asking whether the husband made an affidavit—

Lord Chief Baron *Macdonald*.—It was she that volunteered in that.

Mr. *Attorney General*.—I am not asking you the contents of your husband's affidavit; but such was the state of his health, that whatever he did and said he was not responsible for having done or said; his understanding was disordered.

Mr. *Knowlys*.—I really do not find that there is any thing that can let in the attorney general to this.

Mr. Attorney General.—You do not know the next question I am going to ask; I am sure you will retract your objection, if you hear it.

Mr. Knowlys.—And, at present, I must object to any statement of the understanding of this gentlewoman's husband.

Lord Chief Baron Macdonald.—It cannot be called an illegal question.

Mr. Attorney General.—Was he not, then, in the year 1784 competent, in point of understanding, to have been examined as a witness at a criminal bar? that is my question. I ask you, whether captain Lacy was not competent, in point of understanding, to have been examined at a criminal bar, as a witness to have proved his share in this court-martial, if he had any?—I dare say he was.

How many years did he live after that?—You are going to ask me questions quite beside.

It is a question you must be able to answer best of all persons. Can you tell me when he died?—About three years after we returned from Africa.

About the year 1787; tell us at what precise time as near as you can, did he return to England?—We were about a year and a half in Africa.

You arrived here therefore in the beginning of the year 1783, for you had been a year there when governor Wall quitted. Your husband was alive, then, for three years after that?—He was I believe.

During the remainder of his life, except during the time you say he had the coup de soleil, was he not competent to be examined as a witness at a criminal bar?—I do not think he was; he was extremely enervated.

Did not he continue in the army? did not he continue to do his duty in the army?—He was upon half pay.

Where did he live?—He retired to Ireland; he never was well afterwards.

Do you mean confidently to say, that he was so disturbed in his mind, or enfeebled in his faculties, as not to be competent to give evidence in a court of justice?—I am sorry to say I do not believe he was.

You said he was competent in 1784. What, was it a coup de soleil of the northern clime that deranged him again? or how did he get restored to his incompetence?—He never after he received the coup de soleil, was competent for doing business again.

Lord Chief Baron Macdonald.—Was he competent to give an account of any thing that passed, in a court of justice.

Mr. Attorney General.—Had he a nurse attending him? did not he go about and receive his half pay?—He was immediately reduced upon half pay on his arrival in England.

How soon after?—In a few months.

In Ireland where did he live?—At Cork sometimes.

Did he do any sort of business?—None.

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He could articulate?—Yes, but many people can articulate.

Do you know any body here who will confirm you as to the infirmity of his faculties, and show that he was not fit to be examined during that time?—I do not think he was; he was in a continued state of ill-health.

He was well enough to make a will, I dare say, under which you have taken property since that time?—You are jocular.

I ask you whether, subsequent to that time, he has not made a will which you yourself have proved?—An officer on half pay has not much to make a will of.

But he may make a will; he has not?—No.

Did he or not make a will?—He did not. Of course, you cannot have proved that will?—I cannot.

You are sure of that?—I am sure of that.

Is your son here?—No, he is at Athens.

Then you are sure that a man of the name of Evan Lewis was not orderly serjeant attending upon governor Wall that day?—I am confident, and declare he was not.

Evan Lewis called into court again.

Mr. Attorney General.—(to *Lewis*) Look at that person; do you know her?—Yes, it is Mrs. Lacy.

Do you remember her when you were at Goree?—Yes.

Was she acquainted with your person?—I do not know that she knew me particularly. I have been in and out of the house many times when she was there.

You have said you were orderly serjeant attending upon governor Wall, on the 10th of July?—The 10th and 11th in the morning.

You are sure of that fact?—I am certain of that.

Was there any person of the name of Carney who was orderly serjeant that day?—There was one Carney had been a serjeant.

But was he attending that day as orderly serjeant upon governor Wall?—No.

Are you sure you were the orderly serjeant attending him that day, and no other person?—I was; I followed him out where he went to the whole day, and none other.

Mr. Attorney General.—(To *Mrs. Lacy*) Is that the man you meant by the name of Carney?—No. If you believe the evidence of an African soldier before me—

Lord Chief Baron Macdonald.—It is not for any body to believe but the jury.

Mrs. Lacy.—I say he was not orderly serjeant on that day.

Mr. Knowlys.—The orderly serjeant is not a fixed man; one is orderly serjeant one day; another another?

Evan Lewis.—Yes it is changed every morning, as the guard is relieved.

Mrs. Harriot Lacy re-examined by *Mr. Knowlys.*

Are you intimate with Mrs. Wall the wife of Mr. Wall?—I have the honour to be so.

I

Are you intimate friends to this time?—We are intimate friends.

Is Mrs. Wall perfectly apprised of all the visits you make to her husband?—She is indeed.

Are they an affectionate husband and wife to each other?—They are; none can be equal to them.

Then I ask you, is there the least ground for supposing you have been improperly visiting the governor?—There is not, I give you my honour.

Will you give me your oath likewise?—I give you my oath.

Has not Mrs. Wall been very frequently, and most frequently, when you have been with the governor, under his present affliction and confinement?—I have never been but once or twice with the governor without his wife.

Have you the least reason to suppose, that she is in any way dissatisfied with your visits to her husband?—Not the least.

In the climate of Africa, I take it, the windows are necessarily opened for the sake of air; and therefore you have an opportunity of hearing all that passes out of doors?—Constantly open.

In the conversation that took place between these people and the governor, did they apply to him, or did they mention the name of this Mr. Deering?—They applied to him as the person who was to pay them.

Did they at all, in your hearing, mention the name of Mr. Deering to him?—I never heard them.

Their demands then were made upon him personally?—Upon governor Wall personally.

Do you know a person of the name of Faulkner?—I do.

And his wife?—I know them very well.

I do not know whether I understand you rightly or not; was your own husband to take possession of the government house as the next day upon the governor leaving it?—He was.

Was that therefore the reason of your having been there, as the governor was expected to go next day?—It certainly was. I staid there the whole day; the governor left many things in my possession.

Mr. Attorney General.—What time was it when your husband was afflicted with this coup de soleil at first?—Some few months after the governor left the island.

But he continued on in the government till he came home in the year 1782, or the beginning of 1783, so that it did not impede his exercise of the office of governor?

Mr. Knowllys.—At the time when this court-martial was formed, and he was left in the government, he was in perfect possession of his faculties was he?—He certainly was, and for some months afterwards.

Mary Faulkner sworn.—Examined by
Mr. Gurney.

Are you the wife of John Faulkner?—I am.

What is he now?—My husband is a pensioner upon the royal regiment of artillery.

Were you with him at Goree in the month of July 1783?—I was.

What corps was he in then?—In the royal regiment of artillery.

Not in the African corps?—No, he never belonged to that.

Do you remember governor Wall leaving the island?—Perfectly well.

Do you remember what took place the day before he left the island?—Perfectly well.

Were you at the government house on the morning of that day?—I was.

Did you see any of the African corps come to the government house in the morning?—A little after one o'clock.

Had you seen any body of men come before that time?—No, I was not there at the first time.

When they came a little after one, how many of them were there?—I cannot positively say; but to the best of my remembrance the most that were off duty.

Can you state pretty nearly how many there were?—About fifty or sixty.

Whom were they headed by?—Serjeant Armstrong, Patterson, Upton, and the two drummers.

Did they come in a quiet peaceable manner, or otherwise?—No, they did not; they came in a very *unregular* manner.

Did the governor go out of the house to them?—He came out to them.

Where were you at the time?—I was going past the government house, with some work, to a Mulatto woman.

You were outside the court yard of the governor's house then?—I was.

Lord Chief Baron Macdonald.—You were outside of the rail?—There was no rail; I was passing by the government house then.

Mr. Gurney.—How near were you to the governor and to the men, when the governor came out to them?—Quite near; I made it my study to stand to hear what they had to say.

When the governor came out, what passed?—When the governor came out to them, he desired Armstrong to march off the men; he swore, he would be damned if he would.

What did Armstrong say they wanted?—They wanted short allowance money from governor Wall, which governor Wall said there was none due in his time. After that, governor Wall desired to have two or three hours to think of it, and desired him to march the men off to the barracks.

Lord Chief Baron Macdonald.—When was it the governor desired to have two or three hours to consider of it?—At this conversation.

Mr. Gurney.—After he had desired them to march to the barracks, did he desire two or three hours to consider of it?—He did.

To whom did he give that order?—To serjeant Armstrong.

Did Armstrong say any thing to the governor, respecting his leaving the island?—He swore they would break open the stores, and he would be damned if the governor should quit the island except he paid them, or they would break open the stores and satisfy themselves.

Do you remember Armstrong saying any thing more, before the men were marched away?—I do not recollect any thing more at that time; I went and delivered my work.

Did you see the men march away?—Yes.

In what manner did they march away?—Shouting and making a noise; and swore they would be damned if they did not break open the stores, and pay themselves.

Did you hear any of the African corps afterwards talking upon the subject?—I did, after I went home to my own apartment.

Where was your apartment?—In the artillery barracks.

What time in the afternoon was that?—Between one and two o'clock, as near as I can recollect, that happened at the government house. I returned to my apartment in the barracks at half after two or three, as near as I can think.

After you had so returned, did you hear Armstrong, or any other of the African corps, say any thing about the governor or any body else?—Yes, Armstrong, Upton, Patterson, Robinson, and several more, and one of the drummers, and a great number of the African corps, came to Besson, and desired him to make out some account of the short allowance; he was our serjeant, belonging to the artillery.

Did you hear any of this African corps say any thing else?—I did.

Did you hear Armstrong himself say any thing particularly?—No.

Or any other in his presence?—Serjeant Besson told them he thought it was most proper for them to be quiet; they swore they would be damned if they would, except governor Wall settled with them; the serjeant told them they did not know what consequence it might end in to oppress the commanding officer of the island, for it would end with a bad consequence.

Did you hear any thing more?—Nothing that I can recollect, any more than that they swore, that if he did not comply with their orders, they would take his life, or he should not leave the island.

Mr. Justice Rooke.—Whom were they speaking of?—Of governor Wall.

Mr. Gurney.—Did they say that to serjeant Besson, or among themselves?—They said it before serjeant Besson and several more.

Did you hear them say any thing at all respecting any support they might receive?—I cannot recollect any thing about that, because it was not in the line of life that I was in for a woman to hear any thing of the kind; they had all the support that other troops had.

Did they intimate any thing respecting any encouragement they hoped to meet with from any body?—Not that I remember.

Was any thing said about any gentleman on the Island?—No; there was Mr. Poplett said—

What did these men say respecting Mr. Poplett?—They mentioned no names, but they said they had a sufficient friend on the Island, which they said was a gentleman that would support them in all this.

What situation was Mr. Poplett in at that time?—Under arrest.

Mr. Justice Lawrence.—If they did not mention Poplett's name, enquiring into his situation is not relevant.

Mary Faulkner cross-examined by Mr. Solicitor General.

You said you were not present the first time they came up to the governor?—I was not.

Tell us, as near as you can, what it was they asked the governor for first?—It was the short allowance money, or something that way, as near as I can recollect.

Did they ask for short allowance money that was due in governor Adams's time, that you recollect?—They did not.

You are quite certain of that?—I am.

That you will swear to?—Yes.

That they did not ask for short allowance money due in governor Adams's time?—I am quite certain they did not.

You say the governor told them there was nothing due in his time?—Yes, that was the answer I heard.

Your husband was one of the garrison?—He was gunner of the main guard.

On that day particularly?—Yes, upon the 10th of July.

Do you know, in point of fact, whether the garrison had been put upon short allowance or not in governor Wall's time?—Never on short allowance, when there was provisions enough upon the island.

But did it always happen that there were provisions enough upon the island?—Governor Wall supported the island as well as he could; but sometimes, when there was not ships at the island, he could not; but he was a good commanding officer to support his troops.

But occasionally there were short allowances?—There were, but governor Wall always exerted himself in every respect.

This expression that they made use of, Armstrong, Upton, Patterson, and the drummers, about killing the governor, was addressed to Besson, in Besson's hearing; he was by?—I do not know whether it was addressed in his hearing or not; I will speak what I know, and no more.

You said just now, it was to serjeant Besson that they addressed this?—No, not to him; I did not say so.

Was not he by when they said it?—No.

Did not you expressly say so?—I was in my own apartment when they said that.

I understood your apartment did enable you to hear what they said to serjeant Besson?—Don't edify me with any thing of the kind; what I know I will speak.

Where were you when he said it would end in bad consequences?—In my own apartment.

Then your own apartment was so situated as to enable you to hear what passed when they were talking to serjeant Besson?—Yes, serjeant Besson went through my apartment. I heard them come to serjeant Besson, and desire him to make out some accounts.

What did they say about the governor's life?—Serjeant Besson said, "You had better let it alone; it will only end in bad consequence." "I am damned," said Armstrong, Patterson, Upton, and many more, "I am damned, if he don't settle with us, but we will stop him, and have his life."

Then, when serjeant Besson said they did not know what consequence this would lead to, they then replied, they would have satisfaction, if he did not give them what they required?—Yes.

This was said in Besson's presence?—It was; he leaned his arm over the door; he recollects it perfectly well; they swore they would be damned if they would not do so and so; he desired them to be quiet.

Was it not in consequence of his desiring them to be quiet, that they said they would have the governor's life?—Yes.

And in answer to what he said?—Yes.

Then it must be said to him?—I think it was, to the best I can remember.

Do you know Evan Lewis?—I cannot say I can recollect him; yet I think I do; but I hear he wants to bring himself in as orderly serjeant.

When did you hear that?—I heard it about two or three weeks ago.

Was he or was he not orderly serjeant?—He was not, upon my soul.

Who was orderly serjeant?—One serjeant Carney; he was sent to Cape coast by governor Lacy.

Did you see Carney, when the governor was speaking to Armstrong and these people?—I did not; he was busy with the stores, getting the stores on board for the governor.

Did you see him?—I saw him busy with the stores.

At what time did you see him getting the stores on board?—All the whole day; I cannot say what time.

Did you see Evan Lewis there?—He was once a corporal there of the 75th regiment, but he was broke; he wanted to get in to be additional gunner, as ours died so fast; but he was not permitted.

Was he a corporal in governor Wall's time?—I cannot recollect that.

Mary Faulkner re-examined by Mr. Gurney.

But Evan Lewis had been a corporal, and was reduced to the ranks?—He was.

Are you confidently sure he was not the governor's orderly serjeant that day?—I am. Mr. Gurney.—Is Evan Lewis there?

Evan Lewis called up again.

Mr. Gurney.—You were, when you first went on the island, a corporal?—I was a private.

You were then raised to be a corporal?—Yes.

Were not you broke afterwards, and reduced to the ranks?—I was broke after I was raised to a serjeant; I was land serjeant at this time to do serjeant's duty.

Had you then any other rank than corporal?—No.

In that situation were you broke?—No; a good while after that I was broke from a full serjeant.

Lord Chief Baron Macdonald.—Who made you full serjeant?—Captain Lacy; I did the corporal's duty only five weeks; some of the serjeants were ill, and I was ordered to do serjeant's duty.

You had not been broke during governor Wall's time?—No, it was sometime afterwards.

Mr. Gurney.—(To Mary Faulkner.) You are perfectly sure, that on that day Carney did the duty of orderly serjeant?—I am perfectly confident of it.

John Faulkner sworn.—Examined by Mr. Alley.

Do you recollect being at Goree in the year 1782?—Yes.

Do you recollect the day that governor Wall left Goree?—Yes.

Do you recollect having seen him any where the day before he left the island?—Yes.

What situation were you in on that day?—I was gunner to the main guard.

Where was it you first saw governor Wall on that day?—About twelve o'clock, coming down the parade.

Did you happen afterwards to see him at the guard house?—Yes.

Do you recollect who was the sentinel on duty at the time you saw him at the guard house?—Yes, Fawcett.

Do you recollect whether or not there had been any man in custody in the guard room at that time?—Nobody at that time, but it is a customary thing to keep a sentinel at the guard-room door.

Do you remember whether, in the course of that day, any body was in custody there?—Yes, Patterson was afterwards put in custody.

At what time was it that you saw Patterson in custody?—In the afternoon, between four and five.

Was that previous to the time when the ring was formed?—About the time that the ring was formed.

Did you see the governor at the guard house, after Patterson was in custody?—Ensign Ford came and told the governor that there was no keeping Patterson in the guard house.

Ensign Ford had the command of the guard?—Yes.

What passed upon that?—The governor came over to the guard house, and chastised the sentry for not doing his duty.

Do you recollect whether the governor, when he came to the guard house, attempted to go into the room?—The governor went to turn Patterson back into the guard-room; Patterson had come out of the guard-room; the governor attempted to turn him back; the man on sentry stopped the governor with his bayonet.

Was that Fawcett?—It was.

What did the governor do upon being stopped?—He disarmed the centinel, and knocked the bayonet out of his hand; we generally use a bayonet there instead of a musket, being more convenient.

Do you recollect in what position the sentry held the bayonet?—He had it over his arm, and presented it right to the governor's breast, when he went towards the door.

Do you recollect any thing that was said by Patterson about that time?—After this the governor ordered that Fawcett the centinel should be confined.

Did he go and put him into the guard-room himself?—He desired Ensign Ford, the officer of the guard, to confine him. Fawcett said, "he was damn'd sorry he did not run the governor through;" and repeated the words two or three times over.

Lord Chief Baron Macdonald.—Did you hear him say this?—I did; I was then ordered to join the artillery upon the parade.

Mr. Alley.—When punishment was to be inflicted, was that a usual thing to be done?—We never did parade with the African corps before that; whenever we paraded, to go to church or elsewhere, we always paraded by ourselves.

Do you recollect whether Patterson said any thing?—I did not hear him say any thing at that time.

Did you, in consequence of the order, go to the parade?—I did.

Did the rest of the artillery corps go?—We were all there.

You say, when the governor came up, Patterson was outside the door?—He was.

Was he going towards the parade at that time?—He was.

When he was going apparently towards the parade, did he say any thing?—He said a word I could not rather repeat.

Repeat them as well as you can?—He spoke in a mumbling way. I cannot exactly say what it was he said; but I thought it

was something about joining the rest of the corps; but I cannot tell exactly what it was.

After this, did you go to the parade?—Yes, I did.

Did you remain on the parade till after the punishment was inflicted, so as to see all that passed?—Yes, I did.

Did you form part of the ring?—I did.

Do you recollect, after the ring was formed, what officers were there?—Captain Lacy, lieutenant Fall, and lieutenant O'Shanley.

Was ensign Ford there?—No, he was on the guard.

These three officers were within side, were they?—Yes.

Where was the governor?—Outside the ring.

Were any, and what directions given by the governor to these officers?—As far as I heard afterwards, he ordered a court-martial.

Is that from what somebody else told you, or did you hear it?—I have been informed so.

During the time the officers were inside the ring what took place?—Armstrong was called forward, and asked what he had to say for his own defence; he said nothing; he did not reply at all.

Mr. Justice Rooke.—Did they tell him what he was charged with?—By being mutinous.

Mr. Alley.—What was said to Armstrong?—Captain Lacy said, "What have you to say for yourself, Armstrong, being in this mutinous affair."

Did he make any answer?—He made no reply.

Mr. Justice Rooke.—Did they tell him what mutinous affair it was?—Stopping the governor from going on board; and threatening to bring his stores on shore, if he did not settle with them.

Did captain Lacy, or any body else, say all that to Armstrong?—Yes, captain Lacy told him.

Now let us hear all captain Lacy said?—Captain Lacy told him he was tried for stopping the governor from going on board, and threatening to bring his stores on shore.

You heard captain Lacy say this yourself, did you?—Yes, I did. He was then tried by captain Lacy, lieutenant Fall, and lieutenant O'Shanley.

Lord Chief Baron Macdonald.—Was there any more trial than telling him he had wished to prevent the governor from going, and that was a mutinous affair? was there any thing more?—There was no more trial.

Then the trial was, acquainting him with that, and asking him what he had to say for himself?—Yes.

Mr. Alley.—Did he say any thing for himself?—No, he did not.

Do you recollect whether any thing farther was said?—Nothing farther was said.

Did you see the surgeon there?—Yes, I did.

Do you recollect anything farther that passed at that time?—The surgeon and the linguist were both there at the time.

Do you recollect whether any sentence was pronounced?—There was.

What was said?—Captain Lacy told him, he was to receive eight hundred lashes by the linguist; he was then tied up, and received them; the surgeon was there present the whole time.

Did you afterwards see him go away?—Yes.

How did he go?—He went away, as I have seen other people, with his shirt about his shoulders.

Was he carried, or did he walk?—He walked away.

Did you happen to be near the water side at any time in the morning?—No.

Did you see the governor any where in the morning, but when you saw him on the parade?—No.

After that, did you see him any where, except on the parade and at the guard house?—No, I did not.

Did you see him any where about two o'clock?—No, I did not.

Did you see Armstrong and the governor in company any where, before you saw them on the parade?—Yes, Armstrong, Upton, Patterson, Robinson, Jennings the drummer, and Brown.

Where did you see them?—A little way off the guard-house.

At what time of day was that?—About twelve o'clock I saw these men come up to the governor, and several more besides them; it was a little way off the guard-house.

What passed?—I cannot say.

Did you hear any thing that they said?—When they left the governor, some of them came over to their comrades; they asked, "Well, and how did you come on?" They told them, that they were going up to the governor's; and they said, "Well, we shall stand by you."

Who said, "we shall stand by you"?—Some of the guard said so to the men who came over to them.

Lord Chief Baron *Macdonald*.—Who were the men in the guard-room?—It was some of the men who were on guard who said that.

Who were the persons that asked, "Well, how did you come on"?—The persons had spoke to the governor, the others said they would stand by them.

It was some of those men that were off duty then, that came to the guard-house?—It was.

Mr. *Alley*.—What situation of life are you in at present?—A carpenter.

Where?—In the Warren at Woolwich.

And a pensioner also?—Yes, a pensioner to the Board of Ordnance.

John Faulkner cross-examined by Mr. *Plumer*.

You belonged to the artillery corps at Goree?—I did.

What number did they consist of at that time?—There were six of us.

Who was your officer?—Lieutenant Short.

Who was your serjeant?—Serjeant Besson.

So you all attended the parade that evening, did you?—As far as I know.

With your officer and your serjeant?—No, our officer was not there.

Was your serjeant with you?—The serjeant was ailing at that time.

Was serjeant Besson ailing at that time?—He was.

He was at the hospital, was he?—No, we had no hospital.

There was an hospital belonging to the garrison?—A general hospital; we were attended in our own barrack room.

How many men, in fact, of the artillery, attended the parade?—Five of us.

Was that all that attended?—Yes.

Lord Chief Baron *Macdonald*.—How many of the artillery were there upon the island?—The serjeant, one first gunner, and four privates.

Mr. *Plumer*.—Did you form a part of the circle?—Yes.

Were you in the front or the rear rank?—The artillery always generally takes the right.

Were you in the inner or outer circle?—In the front rank.

Were the officers sitting on the court-martial inside the circle?—Yes.

Was any other person inside the circle?—The surgeon.

Was not governor Wall inside the circle?—Not that I saw.

Was not he, at any part of the time while the officers were talking and considering together, at the inside of the circle?—I did not see him inside the circle.

Will you swear he was not inside the circle?—He might be inside, and I not take notice.

Were you attending to what passed inside the circle?—Yes.

At the time Armstrong was called upon, did you see where governor Wall was then?—I cannot particularly say where he was then.

Upon your oath did you see this court-martial examine any witness to prove the charge? did they examine any one person to prove it?—Not that I know of.

So nobody was called upon to prove it?—Not that I know.

Not even governor Wall?—For what I know he might.

You never saw him inside the circle, and those persons were holding their court inside the circle?—They were at one corner of the circle.

You saw serjeant Armstrong called out of the ranks, did not you?—Yes.

Who called him out of the ranks?—Captain Lacy called him out.

Did not governor Wall call him out of the ranks?—Not that I heard.

Will you swear that?—I did not hear governor Wall call him out.

Did you hear captain Lacy call him?—I heard captain Lacy call him.

Do you mean to swear it was captain Lacy or governor Wall called him out of the ranks?—It was captain Lacy.

Will you swear that?—Yes.

And before that Armstrong was within the ranks?—Yes.

And he was called out of the ranks by Captain Lacy?—Yes.

Do you mean to swear that?—Governor Wall might call him out for what I know.

After he had been called out of the ranks by captain Lacy, did he go back into the ranks before he was punished?—He did not go back into the ranks that I saw; I do not think he did.

Then the person who called him out of the ranks was captain Lacy, and he did not go back into the ranks before he was punished?—No.

Who was it told him he was to receive the punishment of eight hundred lashes?—Captain Lacy went out of the circle, and spoke to governor Wall, who was outside the circle.

Who told Armstrong he was to receive this punishment of eight hundred lashes?—Captain Lacy.

Did any body else tell him that?—The governor was not on the inside at that time.

Was it not governor Wall that told him he was to receive the punishment of eight hundred lashes?—Governor Wall might, for aught I know. Captain Lacy did, I heard him say the words.

Do you mean to say that both of them told him so, or only one?—They may for aught I know.

Lord Chief Baron Macdonald.—He cannot swear positively that governor Wall did call him out, but can swear positively captain Lacy did, as I took him.

Mr. Plumer.—How long were the officers in the circle holding this court-martial, as you call it?—I cannot tell you whether it was half an hour, or an hour.

Do you think it was so long as half an hour?—I believe it was a quarter of an hour, or half an hour.

Will you swear it was so long as a quarter of an hour? as near as you can, tell me, was it a quarter of an hour?—I do not know it was quite a quarter of an hour.

What were they doing? they did not examine any witnesses, and the man said nothing, you say; what were they employed about?—That I cannot say, they were consulting among themselves.

You heard captain Lacy say, "What have you to say for yourself?" and tell him what was the nature of the charge?—Yes.

Did he speak that loud enough for every body who was in the circle to hear it?—I do not know if every one round the circle heard it. I was pretty near hand.

Was not the court-martial in pretty nearly the centre of the circle?—No; it was not near the centre.

What time of day was it when the sentinel presented his bayonet?—After four o'clock, at the time they were forming the parade.

Was it after they had formed the parade, or before?—The parade was just forming.

Was governor Wall called away from the parade by ensign Ford, on that account?—He was; ensign Ford came and told him, and then he went away to the guard-house.

You say the linguist was there, and the surgeon?—Yes.

Were they there before the punishment began?—They were indeed.

Both of them?—Yes.

Do you mean to swear Mr. Ferrick was there, before the punishment began?—When I came there, he was there standing along with the linguist; he came with the rest of the officers.

You swear he was there before the punishment began.—Yes.

You swear that he was there before it began?—Yes, I saw him.

Who inflicted the punishment?—Two men the linguist employed.

Only two men?—Only two.

How many lashes did each of them give?—I cannot say how many justly.

Did they give two or three hundred a piece before they changed?—I do not know that they did.

How many might they give? fifty, sixty or hundred?—They might give a hundred I dare say.

Do you mean to say that these two men who were employed gave 100 each, before they were changed?—They might for aught I know.

But how many did each of them give, before they were changed?—They might give sixty or seventy before they were changed.

Will you swear that they gave as many as that?—I cannot do that.

Will you swear there were not four or five persons employed (black people), and that they were changed at every twenty-five lashes?—They were two to my certain knowledge; there were no more than two that I saw.

That you will swear?—What I saw I will say.

Do you know Mr. Ferrick?—I have seen him.

Have you seen him lately?—Not since I left Africa.

You do not know whether he is alive or dead?—No.

Did you never hear that from governor Wall?—No.

You have been examined about this business before?—No, I was never examined; I made an affidavit of what I knew.

Who applied to you about that affidavit?—He is a strange gentleman.

Where did you make that affidavit?—At the Mansion-house.

How long ago?—Two months.

And you do not know the gentleman who applied to you?—No, he is quite a stranger to me.

What did they give the lashes with?—With a small line; what they call a tent-line.

How big was it?—Not much thicker than your little finger.

It was not like that was it? look at it?—It was not so thick as that.

Will you swear that?—Yes, I certainly will.

Not half so thick, was it?—A tent-line is what we call a half-inch rope, as thick as my little finger.

This is what you call an inch rope?—Yes.

But the one he was punished with was a half-inch rope?—It was.

Peter Williams sworn. Examined by Mr. Knowlys.

In what corps were you, on the island of Goree?—A non-commissioned officer in the royal regiment of artillery.

You were not in the African corps?—No.

Were you there on the day before the day on which governor Wall left the island?—I was.

Were you at the government house any part of that day?—I was at the store keeper's house, and was sent for at different times to the government house, in the course of the day.

Did you see any of the African corps at the government house, in the course of that day?—I did.

Was the African corps the greater part of your garrison?—They were.

Do you know how the privates of that corps were recruited? from whence they came?—I do not.

At what part of the day did you observe them, and what was their conduct at the government house when you saw them?—I saw them about eleven o'clock; they came up to the government house, and paraded before the house.

Lord Chief Baron *Macdonald*.—To about what number of persons?—I dare say there might be a dozen or so, more or less.

Mr. *Knowlys*.—Did you see the orderly sergeant at the government house then?—The orderly sergeant came to me before that and likewise afterwards.

Who was the orderly sergeant that came to you?—To the best of my recollection sergeant Carney of the African corps.

He came to you to come up to the government house?—Two or three times in the course of the day he did.

Did you hear what passed, when these people were parading before the government house?—I heard them make a demand upon the governor for some short allowance of provisions.

What passed then?—There was some altercation, but the governor would not comply with their request.

This was about eleven, you say?—Or it might be afterwards; the governor ordered them to go to their barracks.

Did they go to their barracks?—They did.

Did you see any of them afterwards?—I saw them come up to the very same place again.

How long after the first time was it that you saw them there again?—An hour and a half, or it might be even two hours.

In what numbers were they assembled the second time?—Rather more than there was the first time, to the best of my knowledge.

Can you tell us any of those who were there the second time?—I can tell some of them that seemed to talk most; sergeant Armstrong was one very particular both first and last, and a man of the name of Patterson, and Upton; there might be more but I knew they were the most talkative.

Do you know the persons of any of the drummers belonging to the African corps?—Yes.

Could you distinguish any of those, amongst the number of those who appeared the second time?—Yes, I could; there were two of the drummers I saw amongst the people that came the second time.

What did they, or any of them, say or do, whilst the governor was present? how did they conduct themselves?—They insisted that the governor would comply with their request, in a riotous sort of manner.

Can you tell us any particular expressions made use of by any of them to the governor?

—I can. When the governor refused complying with their request, sergeant Armstrong in particular, and Patterson another in particular, said "they would be damned if he should leave the island, till such time as their demands were complied with."

This, you say, was said by Armstrong in particular?—Yes, and by Patterson, and these in particular I could hear; there might be more that said so.

How long did they continue talking to the governor in this way?—Not long, because the governor ordered them to face to the left and go to the barracks.

What did they, or either of them, say to this order of the governor's to face to the left and go to the barracks?—They seemed to go away but not satisfied, but they did go; they dispersed and went off to the barracks.

Did you hear any thing in particular said by either of them?—They dispersed and went to the barracks; I did not hear any thing in particular.

Did they go away quietly?—No, by no means quietly; they went away in a very

disorderly manner; I cannot tell any of the expressions made use of, but they went away in a disorderly manner.

Lord Chief Baron *Macdonald*.—What do you mean by a disorderly manner?—In a clamorous noisy manner.

Mr. *Knowlys*.—What passed then?—They went to their barracks.

Try if you can recollect any of the expressions uttered at the time they were going away to the barracks?—Yes; I told you before, they said “they would be damned if the governor should quit the island, till such time as their demands were complied with.”

Was that said by more than one?—By Patterson and Armstrong, I said before.

Was it said by more than them?—It might be by others; they were very noisy.

How soon after this did you see the governor or any of them again?—They came up again to the government house.

About what time?—About an hour after.

Lord Chief Baron *Macdonald*.—Did they come three times in all?—They did.

Mr. *Knowlys*.—Of what number were they the last time you saw them?—I cannot recollect whether there were more or less than at the other times.

What passed then?—They made the same demand as before, and the governor refused to comply with it.

Did you see who were present then?—Yes, certainly.

Who were they?—The particular persons were Upton, Armstrong, and Patterson, and these two drummers.

Lord Chief Baron *Macdonald*.—Then Armstrong and Patterson were there all the three times?—Yes, they were.

Mr. Justice *Rooke*.—Who did you say were there this last time?—The same as the first and second times.

Mr. *Knowlys*.—Name their names?—Armstrong, Patterson, Upton, and the two drummers, that were particularly noisy.

What passed between them and the governor the third time?—They made the same demands as before, and the governor still refused.

What did they say, upon the governor's refusing?—They said, “if he did not comply with it, they would be damn'd if they did not break the stores open, and supply themselves.”

What did the governor say to them then?—He begged them to go home to their barracks, and give him a small space of time, and he would think of it.

How long did they continue before the government house, before they separated and went away?—A very little time.

Did you see what was done after that?—They went away to their barracks, according to the governor's request; but they went in a very riotous manner.

Do you know what was done, after they went to their barracks?—The next thing I

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saw concerning of it, was upon the parade, where a circle was formed.

Now relate all that you saw pass, after the circle was formed?—The first thing I observed after the circle was formed, and I saw the prisoner inside the circle, I saw doctor Ferrick, and I saw the linguist and his assistants there, standing inside the circle, and I saw captain Lacy, and lieutenant Fall and lieutenant O'Shanley inside the circle.

What part of the circle were you in?—I was on the outside of the circle.

Lord Chief Baron *Macdonald*.—Did you compose one in the circle?—I did not; because I was taken off garrison duty at that time. I was only a spectator.

Mr. *Knowlys*.—Did you hear any thing that captain Lacy, Mr. O'Shanley, or lieutenant Fall said at the time?—Governor Wall was outside, he came into the circle, and chastised Armstrong with being a ringleader of the mutiny.

What do you mean by *chastising* him?—Telling him he was a ringleader of the mutiny, charging him with being one of the ringleaders of the mutiny.

Was that in the presence of captain Lacy, and the three officers assembled there?—Yes, and of the whole circle assembled there.

Where was Armstrong, when he charged him with being a ringleader?—Inside the circle.

Was any thing said to Armstrong, by any of the three officers, after the governor had charged him with being one of the ringleaders?—The governor first gave orders to captain Lacy and the other officers to hold a court-martial upon him, and then went outside the circle.

Did you hear him give those orders?—I did.

That was before he charged him with being a ringleader in the mutiny?—No, he ordered the officers to try him after he had told him so.

When he had charged this man with being one of the ringleaders of the mutiny, and the court-martial was formed, did you hear either of the three officers say any thing to him?—I cannot say I did; I saw the officers themselves talk together, but did not hear them say any thing to the prisoner, that I recollect.

Did you know at that time what was the sentence upon him?—I saw the officers whisper one another; then I saw captain Lacy go outside, and pull off his hat to the governor, and say something to him, what I did not know.

Is that the mode of reporting to the governor?—That is the mode in the military line.

Did you, after that, hear either of the officers mention what the sentence of the court-martial was?—I did not; the first that I heard of it, was captain Lacy came into the circle; the governor came in and he told Armstrong that the

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Court had sentenced him to receive eight hundred lashes.

That was mentioned publicly?—Yes, to the whole circle; to receive eight hundred lashes, and to be inflicted by the linguists with a rope's end.

Did you stay to see the sentence executed?—Yes, I did.

Did you see the surgeon, Mr. Ferrick, there?—Yes, I did.

Was the surgeon present during the going through the execution of the sentence?—He was.

It is the usual way, I think, when sentence is inflicted upon a man, for the surgeon to be present?—It always is.

The surgeon had an opportunity of observing the man?—Of course he had; he was inside the circle.

Did the man receive the whole of his sentence?—I believe he did; to the best of my knowledge he did.

Did you see him afterwards leave the place to go to the hospital?—Yes, I did.

As far as you saw him, did he walk or was he supported by any body?—He went with his shirt over his back, there was somebody went before him, but nobody to support him.

He had no occasion to be supported, or to be carried at all?—No.

Peter Williams cross-examined by Mr. Wood.

You say this man came the first time about eleven in the forenoon?—Near eleven; it might be sooner or later; I said much about eleven.

Do you know Evan Lewis?—I do not.

You never saw such a man?—I might see him; I have seen many people I know by sight, that I do not know their names.

Will you swear he was not the orderly serjeant that attended governor Wall that day?—I have already sworn that Carney was sent by governor Wall to me several times with messages on that day.

And it was not Evan Lewis attending at the governor's that day?—I do not know that he was.

You do not know him?—I do not know his name; but serjeant Carney was the person that carried all the messages from the governor to me.

Did you see any messages carried by any body else from the governor to the men when they came up?—I did not.

Do not you know, that these men were going to the commissary's house, at that time?—They were coming to the governor's house.

Do not you know that they were going to the commissary's house, in order to get their accounts for short provision settled?—I know I was at the commissary's house and they did not come there.

They are very near one another?—They are; but one is in the front, the other in the rear.

I believe you know that they had a demand for short allowance of provisions?—I dare say they had; I had a demand myself for short allowance as well as them; but we were paid in a different manner.

Then their demand was a just demand?—I cannot say that.

You know there was short allowance they had a claim for?—The whole garrison had a claim for short provisions.

Did the governor deny that they had a right to be paid for short allowances?—Not as I know of.

Then, although he refused to comply, he did not deny the justice of their demand?—I did not hear him say any thing about that.

All that you know is, he would not comply with their demand?—Yes, that is all.

You say they came in a riotous manner; had they any arms with them?—No.

No weapons of offence of any sort?—No.

And they went away when desired?—Yes, the first time; and so they did the second, and third time.

Recollect yourself; are you sure they came a third time?—I am very confident of it.

About what time was the first time?—I told you before, eleven o'clock, or a little after perhaps.

When was the second?—About two hours, or an hour and a half afterwards.

When was the third?—About an hour after the second time.

Where were you between the third time of their coming and the parade being formed?—Some part of the time at the store-keeper's house, and some at the barracks.

You came upon the parade?—Yes.

Where did you come from at that time?—From the store-keeper's, from Mr. Deering's.

Were you on board the ship carrying the baggage or any thing that day?—I was sending the governor's baggage off, but was not on board a ship.

Was the parade formed when you came up?—Yes, it was.

You were on the outside of the circle?—Yes, I was.

Where was the governor at that time?—When I came to the parade, the governor was walking to and fro outside the circle.

Where was Armstrong?—Inside the circle.

He formed a part of that circle, did he?—No, because he was a prisoner standing in the circle.

Do you mean to say he was standing there as a prisoner before he was called out to be punished?—In the inside of the circle he was standing.

Upon your oath, was not he called out immediately from the ranks and punished?—He was not in the ranks, he was a prisoner in the circle.

He never had paraded, nor formed any part of it?—He was taken prisoner.

Mr. Justice Rooke.—When he came up,

the prisoner had been taken out of the ranks?

Witness.—He was standing as a prisoner inside the circle.

Mr. Wood.—How soon after you saw him was it that he was flogged?—In less than half an hour.

Will you say that he was ten minutes after you first saw him, before he was tied up and flogged?—Yes, and more.

Did you hear Armstrong say any thing?—I cannot say I did.

Did you hear any questions put to him by any body?—I heard nobody speak to him, as I know of, but the governor.

Captain Lacy then did not say any thing to him, did he? did you see him speaking to him?—I did not.

Then the only person who acquainted him that he was to receive eight hundred lashes was the governor, was he?—He was the only person I heard; after captain Lacy made his report to him, then he came in and said so.

But captain Lacy did not say any thing to Armstrong, that he was to receive eight hundred lashes?—Not that I heard.

Must not you have heard him if he had said any such thing?—I might not; he might have said it, and I not hear him.

Had you ever seen any body punished before?—I had.

Had you seen any body punished in the way this man was punished, with a rope?—Never before.

How many men were there to the punishment?—The linguist, and two black men.

There were three employed in punishing him?—In punishing the whole of them; I do not think there were more than two employed in punishing him; the linguist was the first that punished him.

Will you swear there were no more?—To the best of my recollection there were no more.

Did they take it by turns?—They did.

How many lashes might they each give?—I did not count them.

Did they give them a hundred a piece?—I cannot tell whether they gave one, two or three hundred a piece.

Were not you near enough to see that?—Yes, but I did not count them.

Where have you been since you came from Goree?—In Gibraltar and America and Flanders and in Holland.

How long were you at Gibraltar?—Better than three years.

Peter Williams re-examined by Mr. Knowlys.

I would ask you, at the time these people were at the government house, did the governor confer with them by messages, or in person?—In person.

He spoke to them in person, and they to him?—Exactly so.

At the time this was passing, were they

facing the commissary's house, or the government house?—Rather close to the government gate, with their backs towards the commissary's house.

As to Armstrong's being a prisoner; do you call a man a prisoner when he is called into the circle?—Any man that is to be tried by a court-martial is a prisoner.

When he is called into the circle, you would call him a prisoner, being called upon to answer a charge?—When he is charged with any thing, he is made a prisoner immediately.

That is what you meant by being a prisoner?—Yes.

Not that he came from any gaol or guard-house?—No.

In the time of the preceding governor, have not they received even to the amount of a thousand lashes, within your knowledge?—I never knew them receive above 700 in governor Adams's time.

Lord Chief Baron Macdonald. . . Seven hundred at one time?—Yes.

Mr. Attorney General.—And with what instrument?—A cat-o-nine tails.

Mr. Knowlys.—When did you leave the island of Goree?—I sailed in the same ship with the governor from thence.

Afterwards you went to Gibraltar, America, Flanders, and Holland?—Yes.

What situation are you in now?—In the regiment of artillery, the same as I was in then.

You never were in the African corps at all?—No.

Charles Timms sworn.—Examined by Mr. Gurney.

Were you at Goree in July 1782?—Yes.

I believe you were a private in the African corps?—Yes.

Do you remember governor Wall leaving the island?—Yes.

You remember the day before he left the island, of course; were you in the barracks on the morning of the day before governor Wall left the island?—No, I was killing a bullock for the troops.

Were you in the barracks any part of that morning?—Yes, at two o'clock in the day I went to fetch something I wanted, to cut the bullock up.

Did you see Armstrong at that time?—He was in the barracks when I went there, and Symmonds, a drummer.

Did you see any thing pass between Symmonds the drummer and Armstrong?—They cut the cats to pieces.

Did you see Armstrong in the hospital after he had received his punishment?—I left him there about eight at night.

You went into the hospital about eight at night?—Yes.

Did you see him doing any thing there?—He and two or three of them were drinking liquor.

What sort of liquor was it?—I believe it was Brandy; I am sure it was.

Did you smell it?—Yes.

Had you any doubt of its being spirits?—No, I could smell it very strong when I went into the hospital.

Did you ever see him drink any spirits after that before he died?—I did not.

Charles Timms cross-examined by Mr.

Fielding.

How had you lived, during the former part of the month of July and in June? how were you clothed, and what sort of living had you in the beginning of July, and the month of June?—We had fresh beef.

Had you your whole allowance of provisions?—We had a pound and a half of bread and a pound and a quarter of beef a day, and a pint of wine.

Were you upon whole allowance, or had you been upon short allowance?—We were then upon full allowance; I had a pound and a half of bread, a pound and a quarter of beef, and a pint of wine a day.

How long had that been the case?—About three weeks.

Had you been upon short allowance before that?—Yes.

How long had you continued upon short allowance, think you?—I cannot tell how long.

When it happens that you are kept upon short allowance, is there any thing given you by way of satisfaction for that afterwards?—I had never any, I thought governor Wall would pay it.

But he did not?—No, he had no money to pay it with.

On the 10th of July you saw nothing going forward till the afternoon?—It was between eleven and twelve o'clock.

Then you saw nothing of them before?—No, I did not see them, because I was down killing my bullock.

What was it that was the beginning of the mutiny?—About the short allowance.

Where was it?—They went to the governor's house.

When was that?—I saw them all in a cluster, when I was down at the beach killing the bullock.

Do you think there were so many as six or seven of them together?—There were about thirty of them.

You could not hear what was said?—No, I could not.

When did you return to England?—In the year 1784.

You came with the rest of the corps, under the command of captain Lacy, did not you?—Yes.

Can you write?—No, I cannot.

Could you write at any time? let us look at your fingers?

[The witness had lost half his fingers.]

Could you write when you came to England?—No, I never could write in my life.

Do you remember ever to have seen this paper? look at it---

Mr. Gurney.—Can you read?

Witness.—No.

Mr. Fielding.—Do not you remember to have seen that paper at Chichester, when captain Lacy and the whole corps were there?—I was discharged at Chichester.

But did not you go before a magistrate at Chichester, with the other part of your corps there, for something or other?—They went and made their complaint about their pay.

You were one of them, were not you?—Yes; captain Lacy got us paid.

Your name is mentioned there with the rest of the corps, captain Lacy being at Chichester, as going before a magistrate?—We were called before the magistrate.

So your name was signed for you; you did not sign it yourself?—No, I never signed a paper in my life of that kind.

When captain Lacy arrived with you at Chichester, was he in the command of that corps, and did he act as usual?—Yes.

Was Mrs. Lacy with him at that time?—I cannot say she was.

Do you remember after governor Wall had left Goree, and the government fell to captain Lacy, he continued in the command there?—Yes, till we came to Chichester.

Did he enjoy his health well?—He was hearty enough while we were there, and when we came to England.

When you went before the magistrate were you sworn? was the book put into your hand?—I was not; the magistrate told captain Lacy he would lend him money to pay the troops till he could get it from London; and captain Lacy paid us every one.

General Gordon Forbes sworn.—Examined by Mr. Alley.

Do you know the prisoner at the bar?—I do.

How long have you known him?—It is between thirty and forty years since I first knew him.

During the whole course of time you have had a knowledge of him, what has been his character for humanity?—We served together as officers in the same regiment at the Havannah. When the regiment came to England, we were reduced upon half pay. I saw nothing of him till I returned from the East Indies; and in the year 1786, I met him, by chance, in a street at Paris, and I know nothing of him since.

What has been his character for benevolence and humanity?—Whilst he was in the regiment with me, it was that of an officer and a gentleman, and in every respect perfectly correct.

General Gordon Forbes cross-examined by
Mr. Attorney General.

At the Havannah, how many years ago?—
Forty years ago.

You know nothing of him since, except a
transient glance of him in the streets of Paris?
—Yes; I know nothing of him since.

General Colin Mackenzie sworn.—Examined
by Mr. Knowlys.

How many years have you known governor
Wall?—I believe my first acquaintance with
him commenced after the peace of 1768;
from 1768 to 1770, and from thence occasion-
ally as we both happened to be in town, till
1784 I think.

Have you served with him?—No, not in
any corps with governor Wall; it was only at
occasional meetings at each others lodgings
in town.

What character did the governor bear, for
humanity and good temper?—I always found
him humane social and friendly, and never
heard any thing to the contrary.

The Reverend Mr. Clarke sworn.—Examined
by Mr. Gurney.

You are a clergyman of the church of Eng-
land?—Yes.

How long have you known Mr. Wall?—I
became acquainted with colonel Wall at Pisa
in the year 1794 and at Florence.

For what length of time did you know him?
—I believe I passed five months at Pisa in
1794 and 1795, and two months in 1796.

Did you live in habits of intimacy with
him?—I visited him constantly, as all the
English did at Florence; he appeared an af-
fectionate husband and father; and every
part of his conduct, that fell under my obser-
vation, gave me the idea of his being a man
of distinguished humanity, a good husband,
and a good father.

Mr. William Langley sworn.—Examined by
Mr. Alley.

What situation of life are you in?—An offi-
cer on half pay.

Do you know the gentleman at the bar?—
Perfectly.

How long have you known him?—I knew
him in the year 1788 at Paris, to the best of
my remembrance. I was in habits of inti-
macy with him for six or seven months; we
spent our evenings together four or five times
a week, in the career of English acquaintance.
I never knew a man of more benign disposi-
tion in my life, a gentleman brim full of the
nicest feelings of philanthropy, and every
one around him at that time considered him
so.

Mr. James Forbes sworn.—Examined by
Mr. Alley.

What situation of life are you in?—I have
an independency.

How long have you known the gentleman
at the bar?—I have known him from about
the year 1771; I used to meet him frequently
then at general Wedderburne's and different
gentlemen's of my acquaintance. I always
heard him spoken of as a person of humanity
and good character in every respect. Five
years ago I was at Rome, and accidentally met
him there; and a better husband and better
father I never knew.

Mr. Attorney General.—My lord I will call
some witnesses to contradict some part of the
evidence of Mrs. Lacy, Mrs. Faulkner, Faulk-
ner the husband, and Peter Williams.

Major George William Phipps sworn.—Ex-
amined by Mr. Attorney General.

I will only trouble you with a question or
two respecting captain Lacy; you knew cap-
tain Lacy, who was at Goree at the same time
you were?—I did.

Did you know him after his return from
Goree?—No, I never saw him after his re-
turn.

Up to what time were you there with him?
—Till July 1782.

Mr. Attorney General.—I had understood
you had known him since he came to Eng-
land.

Mr. Knowlys.—As you are produced on the
other side, I would just ask you this; how
long have you known governor Wall?—I
served in the garrison of Goree under governor
Wall's command about four months, and came
home in the ship with him.

What character did he bear for good nature
and humanity?—I always experienced great
kindness from governor Wall.

Did he bear the character of a humane
good tempered man?—I have no reason to
think the contrary of him from his behaviour
to me.

Mr. Attorney General.—I ask you if that
was his character in the settlement?—Any
thing else could be but hearsay.

Character is hearsay; I ask you whether
he had the character of a humane man, in
the settlement in which he was?—I cannot
say that I have heard that character of gover-
nor Wall.

Mr. Knowlys.—You have heard that per-
haps from lieutenant Poplett?—

Mr. Attorney General.—If you choose to
ask the garrison *capitulum*, I will go through
with them.

Mr. Knowlys.—Have you continued in ha-
bits of intimacy with governor Wall, since he
came to London?—No.

Mr. Attorney General.—You went out with
a particular recommendation to him?—Yes.

And you experienced great kindness from
him?—Yes.

Mr. Justice Rooke.—Were you on shore
the day before the governor left the island?
—Yes.

Do you know what passed at that time?—I
was not present at the parishment.

Were you present at any meeting?—No.
You saw nothing of the transaction?—I did not.

Mr. Poppett called again.—Examined by Mr. Attorney General.

You knew Mr. Lacy after his return to England in the year 1784?—I was under his command.

Had he the use of competent understanding at that time, so as to be fit to be examined as a witness in a court of justice?—I thought his understanding at that time as perfect as ever I knew it; I never saw any act of insanity by him.

Had he his understanding for all ordinary purposes as much as ever?—As much as ever I knew him.

I do not know whether it falls within your knowledge, as you were at that time under arrest; do you know who was the orderly serjeant attending upon the person of governor Wall upon the 10th of July?—I believe Lewis, but I do not pretend to have positive knowledge upon that subject.

Mr. Poppett cross-examined by Mr. Knowllys.

Do you mean to say that this gentleman had not had a coup de soleil, while he was in Africa?—I never knew him have a coup de soleil; I knew him indisposed at one time, I believe from drinking too freely, but he recovered and was perfectly well after; that was while he was in Africa; but he was perfectly sane and in his senses whilst in England, and on the passage home, and whilst he commanded the regiment at Chichester; perfectly so.

Did you know him after he retired to Ireland?—No.

Was not he in ill health when he came to England?—Certainly not; he was as well as ever I knew him; he did his duty through all his several offices very perfectly.

Did Ferrick continue surgeon in the regiment?—He was not surgeon in the regiment; he was in the artillery.

Mr. Ferrick called again.—Examined by Mr. Attorney General.

Did you happen to know captain Lacy after he came to England?—I never saw him in England.

Did you know him to have a coup de soleil, when he was in Africa?—One day when I was walking up the parade with him, he fell down in a fit, but recovered immediately so as to walk home.

And his understanding was as good as usual?—A short time after that, he was deranged for about seven or eight days.

After that, had not he his understanding as completely as ever? had he any recurrence of that complaint, Mr. Poppett, while he had the command of the regiment in England?

Mr. Poppett.—No never.

Mr. Attorney General.—(To Mr. Ferrick) Who was the orderly serjeant on the 10th of July?—I do not recollect.

Mr. Poppett cross-examined by Mr. Knowllys.

Do you mean to say, you never heard of his having this illness?—I was a prisoner most of the time.

Were you ever in the Secretary of State's office?—I was.

Lord George Germaine's office?—I was.

Were you dismissed from that office?—Lord George Germaine gave me a commission in the King's service.

Were you dismissed from that office?—I was.

What was the cause of that dismissal?—An anonymous letter was put in the paper, charging me with having made money in the funds; I found the author of that letter, and the author afterwards made me an apology, which I gave to Lord George Germaine; his name was Demorand, the editor of the *Courier d'Europe*.

That was the cause of your dismissal?—That was the cause of my leaving the office.

Mr. Attorney General.—After that, you said something of a commission that you had?—Lord George Germaine gave me a commission: he paid me up to the day I left the office, and gave me a commission.

The imputation cast upon you by Demorand was of a trifling nature?—I thought so.

And he apologized to you for that?—He did.

Mr. Knowllys.—Was that charge against you false?—He charged me with making 3,000*l.* in the funds.

That was false; but was it false that your name was stuck up at the Stock Exchange?—I do not know it ever was.

Upon your oath, was not your name stuck up there as what they call a *lame duck*?—I cannot say that it was or was not; I never heard that it was, but it is very probable it might have been, from that circumstance.

From what circumstance?—From Demorand's stating me to have had dealings in the stocks.

Had you never had any dealings in the stocks, while you were in the office of the Secretary of State?—I do not recollect having any; I will tell you all I know of the matter.

Do you mean to swear that at the time you were a clerk in the office of the Secretary of State, you had not gambling transactions in the funds?—

Mr. Justice Lawrence.—Can you ask a man whether he has been doing that, which may subject him to punishment?—

Mr. Attorney General.—The man who made that charge, apologized to you?—Yes.

And government reinstated you, through the person of the Secretary of State?—Yes.

Mr. Knowllys.—Do you mean to say you had no transactions in the funds, during the

time you were in that office?—I might have given information to Mr. Ashburnham, who gave my name up.

Was Mr. Ashburnham a person dealing in the funds?—I do not know that he was; but it was through Mr. Ashburnham's conduct, that my name got into the paper.

You gave information of a political nature to Mr. Ashburnham?—He asked me if there was good or bad news; I told him that.

What was Mr. Ashburnham?—A silk mercer in Covent Garden.

Did not you know he had dealings in the funds?—He did not tell me at that time; I heard afterwards that he had; because, the fact is, that I brought Demorand to an account for that charge, and he made me an apology, which I carried to Lord George Germaine; and he gave me a commission.

But Mr. Ashburnham had been dealing in the funds?—I do not know whether he had or not: how was I to know?

Did not you know from himself?—No.

Serjeant *Butler* sworn.—Examined by
Mr. Attorney General.

Do you know who was the orderly serjeant attendant upon governor Wall, on the 10th of July, 1782?—Evan Lewis.

Have you any doubt of it?—No doubt.

Serjeant *Butler* cross-examined by Mr.
Gurney.

How do you know it?—I saw him attending upon him.

That day?—Yes.

At what time was that?—In the evening; I saw him going in at the gate of the government house.

At what time was that?—About one or two o'clock in the middle of the day.

Will you swear serjeant Carney was not the orderly serjeant that day?—He was not.

Were there two orderly serjeants on that day?—No.

One man was on one day, another another; did you see him put there in the morning?—Yes.

Where were you?—Upon the parade; I saw him stationed there in the morning.

Was he a serjeant or corporal;—A corporal then, doing serjeant's duty.

And you are quite sure he was orderly serjeant that day?—Quite so.

Serjeant *Besson*, called again.—Examined
by Mr. Solicitor General.

You said Armstrong and others came to you to desire you would make out their accounts?—Soldiers came to me, I do not know who their names were.

Did they make use of any such expressions as these, when you desired they would be quiet, that they did not know what consequences might come; did they swear, that if the governor did not comply with their orders they would take the governor's life; or he

should not quit the island?—Not in my hearing.

Did they use any expressions of that nature?—Not any in the least, in my hearing.

Do you know Mary Faulkner?—Yes.

Was she in the room at the time they were there?—She might be in her own room; it adjoined to mine, and the door might be open.

And no such expressions as those were addressed to you?—No, not that I remember; not in the least.

You, I think, were one of the artillery?—Yes.

Were the artillery ordered to parade that evening, with the rest of the troops?—I had no orders.

Were you sick that evening?—Not that I remember. I attended my duty next day, saluting the governor when he went for England: but I do not remember but what I was able to do my duty the day before.

Did the soldiers of the artillery parade as a corps, with the other persons on that evening?—Not at all times; I believe they all, except myself, did that evening.

Did they parade amongst the others?—I believe they did, but I cannot positively say.

Serjeant *Besson* cross-examined by Mr.
Knowlys.

Do you recollect giving these men any advice about their behaviour?—They told me they had been at governor Wall's, to desire him to settle with them for provisions; I told them they had better not trouble the governor; it might be worse for them.

Lord Chief Baron *Macdonald*.—What did you mean that they should understand, by its being worse for them?—As they came desiring such a matter as that, I thought it might cause them some trouble.

What did you mean they should understand by saying it might be worse for them?—Because it is not altogether genteel and prudent for four or five together to go to an officer to demand any thing. I thought if they went in that manner, they might come into trouble; they did not seem any way riotous with me.

I suppose you meant it is not soldier-like for four or five to trouble the officer together?—Yes.

Captain *Wright* called again.—Examined
by Mr. *Plumer*.

Did you know Peter Williams at Gibraltar?—I did.

Have you known him some time?—I knew him three years there.

From the knowledge you had of his character, is he a man to be believed upon his oath?—He was reckoned a lying, shuffling fellow there.

From the character he generally bore, is he a man that you think ought to be believed upon his oath?—For my own part, I should not place much reliance upon him.

Mr. Attorney General.—Considering the length of time this trial has already occupied, I shall not trouble your lordship with a reply.

SUMMING UP.

Lord Chief Baron Macdonald.—Gentlemen of the Jury;—This case, for many reasons, will, in my apprehension, require your closest and best attention. In the first place, the charge against the prisoner at the bar is the heaviest which our law knows; his life is at stake; and that, of itself, would, I am sure, be sufficient to excite every degree of care and attention in you:—but in other respects, it seems to me to be of peculiar importance; for on the one hand, as the attorney general has most liberally and most sensibly said, when a well-intentioned officer is at a great distance from his native country, having charge of a member of that country, and it shall so happen that circumstances arise which may alarm and disturb the strongest mind, it were not proper that strictness and rigour in forms and in matters of that sort should be required, where you find a real, true, and genuine intention of acting for the best for the sake of the public. You see they are in a situation distant from assistance and from advice; in these circumstances, if a man should be so much thrown off the balance of his understanding, as not to conduct himself with the same care and attention that any one in the county of Middlesex would be required to do, and does not exceed greatly the just and proper line of his duty, allowance for such circumstances ought unquestionably to be given to him.

But, on the other hand, it is of consequence, that where a commander is so circumstanced,—that is, at a distance from his native country,—at a distance from inspection,—at a distance from immediate control,—and not many British subjects being there,—if he shall, by reason of that distance, wanton with his authority and his command, it will certainly be the duty of the law to control that, and to keep it within proper bounds. The protection therefore of subjects who are serving their country at that distance, on one hand, is one of the objects you are to have in view to-day; the protection of a well-intentioned officer,—if such he be,—who does not by his conduct disclose a malevolent mind, but may disclose human infirmity to a certain extent, who being in trepidation and alarm of mind, overlooks some things he ought otherwise to have regarded,—such a man's case is, on the other hand, deserving of great attention.

The crime imputed to this prisoner is, the murder of Benjamin Armstrong, who served in the corps of which this gentleman had the command, and he was also commandant of the troops in the island where that corps was stationed. The indictment charges (and it is fit you should have in view what is the pith and substance of an indictment for murder) that malice is to be discovered in the breast

of that person who is accused;—the nature of this malice I shall explain, by-and-by, in very few, and I hope, intelligible words, because I mean to borrow them from the most intelligible writer we have in our law upon that subject. I shall first allude to the way in which the counsel for the prosecution told you, that such subjects are to be viewed.

The first thing is to establish the fact, that the prisoner was the cause of the death of the person deceased; that being done, on the part of the public, it throws upon that individual the burthen of proving, either that it was justifiable, or that it was necessary, or whatever qualification that fact may receive; and it is from evidence on his part, that he is to explain that to a Jury. The nature of malice, as it is now understood,—and has been for ages in this country and wisely so,—is not merely personal malevolence or spleen against an individual, or what would in vulgar terms be called spite; but we understand, by the word malice, the act of putting to death, or causing to be put to death (which is the same), the act of killing being attended with such circumstances as in ordinary experience show (of which experience a jury is the proper judge) a wicked, depraved, and malignant spirit; it therefore means a killing from a wicked and corrupt motive; and indeed one might say, that all the cases which we can find, of the malice which is inferred from circumstances, turn on the single point, that the fact has been attended with such circumstances as carry in them the plain indication of a heart regardless of the life of man, and bent upon mischief.

I would also mention to you, that in all cases of corporal punishment, as I conceive, where there is lodged a discretion, regard is to be had to the extent of that punishment and to the means of inflicting it; because legitimate punishment may be inflicted in such a manner as to shew, that the infliction of the punishment was made the ground of wilfully carrying it to an extent and excess that would be attended with the destruction of him who is the object of it. I conceive, for example, that a regimental court-martial, although it is to act by discretion, and is not strictly meted and bounded in the degree of punishment by act of parliament—nor are many subordinate punishments which are discretionary in other courts—that such tribunals cannot go to any excess that they please, either in the extent of that punishment, or in the mode of administering it. I conceive that a regimental court-martial, and those who are to see its sentence put into execution, are bound by the rules which good sense, experience, and humanity point out, as not being so excessive, as upon the very face of them to be possibly the means of executing a sentence they could not pronounce, namely, a sentence of death.

Now, gentlemen, to make this extremely familiar. It is perfectly clear, that many persons have authority to correct in a certain de-

gree. A master has to correct his servants. A parent has not only the power, but it is his duty to correct his child; but let me suppose that instead of inflicting five or six strokes with a few birch twigs upon that child, you inflict five or six hundred; although the instrument be a legal instrument, and cannot be quarrelled with, yet the extreme excess of the quantity may denote an intent to do mischief, not bridled by that which ought to bridle human actions. I will put it likewise that the instrument itself is improper; suppose instead of five or six strokes with a rod, you give five or six blows with a sledge; you would say that was an instrument likely to kill the child, and would be an excess with respect to the instrument itself. So also I conceive it is not to go abroad so the world, that a court-martial is to inflict an over-great number of strokes with an instrument likely to do much more mischief than the ordinary instrument: it may be, that a hundred strokes with a particular instrument may do more mischief than a thousand with the instrument ordinarily used. I take it, they are bound to inflict that measure of punishment which has been known ordinarily to be inflicted and borne; and it may be a question, whether, if the quantity be inordinate in proportion to the instrument, that may not be evidence of such malice as may constitute that which would otherwise be justifiable, a murder according to the definition of the law of England.

Another circumstance too which I think material for you to have stated to you, in order that you may judge of the evidence (applying it always as you go along) is this: I apprehend there is no apology for a man if he puts another in so dangerous and so hazardous a situation, by his treatment of him, that some degree of unskillfulness and mistaken treatment of himself may possibly accelerate the fatal catastrophe. One man is not at liberty to put another into such perilous circumstances as these, and to make it depend upon his own prudence, knowledge, skill, or experience; what may hurry on or complete that catastrophe, or on the other hand may render him service. I believe the whole medical faculty of London would attest the impropriety of a man, in such circumstances as have been described, supporting himself by wine and spirits and those sorts of things; but perhaps a less wise and less able head, would not be aware that these were to be abstained from; that circumstance you in the present case will attend to, with this caution, that if a man, by violence, places another in such a situation that a mortification, for instance, may come on, and is not unlikely to come on by his treatment of himself, that shall not be an excuse; and a murder may be committed, through unskillful treatment, or his mis-usage of himself, may have accelerated the death of the deceased.

Let us now look at the evidence, in which there is a considerable degree of contradic-

tion. When a charge of this sort is brought before a jury, at such a distance of time as twenty years,—which is not, in this case, by any means imputable to the prosecution, but is entirely the act of the prisoner himself,—it will happen, that with respect to fractions of a day, and periods of time comprehended within the short space between nine in the morning, and four in the afternoon, there will be some difference in the recollection of the witnesses; and they may imagine they do recollect dates and circumstances, in which it may turn out they are not accurate. Something of this sort is to be expected in a case of this kind; but here, there is direct and flat contradiction, in some points, to which I will call your attention as we proceed in the evidence. That arises in the instance of the very first witness called on the part of the prosecution, Evan Lewis; the weight of his testimony rests considerably upon the situation in which he was, which gave him an opportunity to be well acquainted with what passed at the governor's house, it being, as he represents it, his duty to attend upon the governor under the denomination of what the military call the orderly sergeant of the day. If he represents himself to have been in a situation which gave him so much access to know what was going forwards, and in truth it shall turn out in your opinion that he has forsworn himself, and that he was in no such situation, that casts a shade undoubtedly over the whole of his testimony, he meaning to give importance to that testimony by direct perjury: you will therefore attend to the evidence on both sides upon that circumstance; for, upon that the weight of his testimony greatly rests.

He tells you, he was a soldier in the garrison of Goree, in the year 1782; he believes he landed there either the 9th or 10th of May, 1779; he continued in that capacity till Christmas-eve, 1786. That lieutenant col. Rooke was the first commander when he went there; and then, captain George Adams became the commander and governor; and then, the prisoner at the bar. He cannot tell how long the prisoner was in command, but it was not two years. He, the witness, was a private soldier at first, was made a corporal by governor Wall, and he has been a sergeant.

In July 1802, he was a corporal doing sergeant's duty, which I find has the appellation of a lance corporal; he states that, as orderly sergeant, it was his duty to wait on the commander in chief, to be at his call, and go wherever he sends him. He was so on the 10th and part of the 11th of July 1782. He says, that the governor left the island on the 11th of July 1782; the witness had himself heard of the intention of the governor to leave the settlement a few days before; and it was known to all the settlement upon the 10th. Upon that morning, the 10th, the witness was by the gate before the governor's house,—where it was proper and his duty that he should be if he was the orderly sergeant of the

day,—he saw a good many men coming from the barracks; there might be fifteen, twenty, or more;—you will advert to the number as we go along, for there is a great deal of difference with respect to that.—This witness numbers them fifteen, twenty, or more;—they were coming from the barracks towards the governor's house; they went past the governor's house to the commissary's house farther on; he does not know whether the prisoner was at the door, or in the house; he could not exactly say which. The prisoner desired him to go and ask them what they wanted; he went and asked them; one of them said, they were going to the commissary's to settle for the short allowance money of provisions, before the commissary went to England. The witness says that it was known the commissary was to depart for England; he carried this information to the governor, who desired him to tell them to go to their barracks, or he would flog one half of them. He went back, and told them so; they went away directly;—he saw no arms or side arms about them (that, gentlemen, is agreed on all hands), there was nothing disorderly passed; it was like other times; they went off and said nothing. That a body of men came again (he does not know whether they were the same individuals or not), in about an hour or an hour and an half; that they were more in number than had been upon the former occasion; that he told the governor, this second time, before they came up near to his house; he (the prisoner) came out on the outside of his gate to meet them; he met them nearly opposite the gate, and called out to Benjamin Armstrong, who was one of them, and who was a serjeant; the governor asked him, what he wanted; he said, we are going to the commissary to settle with us before he goes for England; that Armstrong came with his hat in his hand, as soldiers ought to do when they speak to their commanding officer, and in a manner that is usual with soldiers. That the witness stood very near them. The governor told them again, to go to their barracks, and they went; the men stood where they were, Armstrong came forward, and the governor came up to the men; Armstrong came up to him after the governor called him; he does not know what the governor said to the men, because they turned their backs, as if somewhat frightened, and went away. He heard no disturbance, nor saw any disorderly appearance among them; they had no arms that he could see, no side arms; they were not in their uniform; some in blue jackets, some in one thing, some in another. That he heard no disrespectful language. This was before the governor's dinner, about twelve o'clock, his hour of dinner being about two; that after the governor's dinner, the governor went out, and the witness followed him. He says, they conceived that there was something due for short allowance, for that they had been upon short allow-

ance some time. That two or three officers dined with the governor that day; he followed the governor out soon after dinner; they came out sooner than usual, for they were accustomed to pass their evenings with the governor when they dined with him. The governor passed the main guard towards the parade; the guard turned out to him as he went by to salute him in the usual way,—which is certainly a signal of submission and attention—the governor went on the rampart, where there are two field pieces; the witness stood upon the end of the rampart next the main guard; the governor ran past him towards the main guard, and he began to beat one of the guard who was then under arms; the man he believes was in liquor; he beat him some time with his sword, then took the bayonet from the sentry and beat him with that, and confined both the sentry and that man. The prisoner ordered the drums to beat the long roll, which was the proper beat for the men to fall in; the witness was sent by the prisoner to tell them to fall in without arms, as they were; that they obeyed directly without arms; it was before roll calling, and the men were not in their regimentals; it was before the usual roll-call hour; the roll-call is usually a little before sunset; this was half an hour before sunset. The men were ordered to form in a circle; but whether the prisoner, or another officer gave the orders, he cannot distinctly, at this distance, speak to; he thinks Mr. Ford, lieutenants Fall and O'Shanley part of the time were there, and that the officers were in the centre of this circle; there were about three hundred men, and they were formed two deep; he, the witness, was close to the circle on the outside, the governor was within; he could see what passed, because he leant between the men as they were standing in this way; there was a carriage and part of a gun brought in, he thinks, after they were formed in this manner; he cannot recollect who brought it; he saw the governor speaking to the rest of the officers, but does not know what passed; he heard the prisoner call Benjamin Armstrong out of the ranks; he was in his proper place; he then came out; he was tied to the carriage, ordered by the prisoner to be stripped, and was flogged by black men; the governor ordered the flogging; five or six men were employed; they took the instrument of flogging one after another, in the same manner as the drummers do—they seem to have followed their example; that is usual, there is nothing in that—Armstrong had a great number of lashes; the witness does not remember the number; the instrument was a kind of rope; he cannot speak to the size of it, he never before saw any one punished with a rope of that kind, nor by blacks; that these blacks did not belong to the regiment; that the prisoner was by these blacks, urging them and threatening them if they did not do their duty, and telling them to "lay on you black

— (a coarse word was used) "otherwise I will lay on you." You will observe these circumstances, because by-and-by there is a contradiction to them. He said several times, "cut him to the heart, cut him to the liver." Armstrong begged for mercy; he does not recollect the words he used. Armstrong, after this, was taken to the hospital between two men; the witness saw him going away from the circle; he saw no signs of mutiny between the second coming of the soldiers and the punishment of Armstrong, nor heard any thing that tended that way; he was in the barracks in the course of the day; he heard them talking of going to the commissary before they first went, saying they were advised by lieutenant Fall to have a settlement before the governor and commissary went away. He cannot tell the number of lashes Armstrong received, he did not reckon them; he understood that he died; he never saw him afterwards dead or alive; he says, he saw no court-martial, and he was near enough to see if there had been any; that Armstrong was not called upon to make any defence;—he is confident of that;—he has seen a drum-head court-martial at Chatham; that he saw the officers in the circle; he saw the governor speaking to the officers, and saw them speaking to one another for a minute or two, and then turning to the governor and speaking to him; that Armstrong was called out of the ranks; he heard no sentence pronounced; he heard some words, but does not remember that Armstrong was told what he was to be punished for; the first words were calling him out of the ranks, and bidding him strip; the governor went away next day, and Deering went with him.

Upon his cross-examination, he says he did not hear a sentence of eight hundred lashes pronounced upon Armstrong by the prisoner. You observe, he was on the outside of a double circle, and listening by poking in between the men; but he did not hear any sentence of eight hundred lashes pronounced upon Armstrong; he says that a good many of the corps have died; he cannot tell whether the African corps made the greatest part of the garrison; that he attended the roll-call every day when well; it was a little before sunset; he was then a young man; he does not know that he consulted with the men at all; he is positive, afterwards, that he did not himself consult with the men at all; he never had any meetings with them upon the subject, before they went to the commissary's; it was well known that the governor was going to leave them; he does not remember hearing any thing of any conversations in the barracks about coming to the commissary's house till the 10th; when he went down to the barracks, he heard the men talking about it; he does not know whether Armstrong was or not in the first number; there were not so great a number as fifty, sixty, or seventy; that the first time they did not

come to the governor's house; the next time they stopped in the way, when the governor called to Armstrong, and the governor came out towards them; they did not speak to the governor, nor the governor to them the first time; the second time they were rather more in number than the first; Armstrong was with them as one of the foremost, was walking before them, or one of the first; there was a longish string of them, but whether in ranks or not he could not tell; they did not move like an ordinary crowd of people in the streets of London; there were but a few in number to what a mob in London is; he thought it his duty, and that the governor might blame him if he did not let him know that these men were coming the second time; he was not alarmed for the governor or himself; they were about fifty or a hundred yards off, when he reported to the governor they were coming; he does not know but they were in something of military order;—as to that, perhaps, when military men get together, their habits may make them get into something of a military order, as to their step and the like. I do not think it improbable, that twenty or thirty soldiers together, may fall into the habit of something like military order, without being such a military array as bids defiance, but that is for your consideration;—Armstrong was called out, and he spoke to what questions the governor asked him; the witness heard the governor tell them to go to the barracks; that they went away immediately: he does not mean to swear that he did make no answer, but only in the situation he was, close to him, he did not hear any answer. When the governor called to Armstrong, he, the witness, was as near at that time as he is to the counsel sitting on this side the bar. After the governor threatened them with a flogging, Armstrong turned back and walked off; after Armstrong had told him they were going to ask the commissary to settle with them for their arrears, the governor told him, "you don't know what you are about." Armstrong was advanced about 15 yards before the rest of the men; they stood with their faces towards the governor; he cannot be sure if they were drawn up, but that there was a longish string of them; he heard no such thing as "I will be damned if you go off the island, till the stoppages are paid," at the time the governor ordered them to go back. He says, "I am sure I did not hear them;" he says, he means to swear they went away quietly, did not shout, or throw up their hats in his sight; did not hear Armstrong say that the governor should have time to consider the proposal; he is certain no such thing was said in his presence, nor did he hear the governor say "give me an hour to consider of your demand." That the governor's house is about a quarter or half a mile from the sea side; he did not see the governor go out that morning, but he might go out and return without his knowing it. He

did not see Armstrong with the governor afterwards. Upon being asked, if the governor sent him for the officers in order to bring them to his house, he said he did not; that they came when the dinner-bell rang, about two or three hours after the men had left the place. He remarked the officers went away so soon, and wondered at it; they went towards the parade out of his sight; the governor followed them pretty soon; he did not see the officers afterwards till the men fell in. A person of the name of Fawcett was sentry at the guard house; the governor went into the guard house, he did not see the sentry point his bayonet to the governor's breast;—to be sure putting a bayonet to the governor's breast is one of the most decided acts of mutiny that can possibly be stated to you;—he says he did not see any such thing; he saw the governor disarm Fawcett, by taking his bayonet from him. Fawcett was only walking backwards and forwards, and he did not hear or see any thing of putting a bayonet to the governor's breast. He says, he cannot tell if the corps was composed of convicts, but has heard they were people in general of indifferent character; that half an hour before the usual parade, they were called from the barracks.

He then speaks of this drum-head court-martial at Chatham: I suppose drum-head court-martial means, that when the alarm is such, and the danger is so great that the regular mode of summoning courts-martial cannot be followed, so many officers as are upon the spot are to be summoned together; but then they are not to proceed altogether without any regard to the interest of the prisoner, though they may not proceed exactly according to the directions laid down in the articles of war. I suppose that a drum-head court-martial is suddenly called, and as well formed as circumstances will admit of upon the spur of necessity. He says, that at this drum-head court-martial at Chatham one drum was put upon the top of another, and an officer had pen and ink writing down the evidence: lieutenant Fall was present when Armstrong was called for from the ring; captain Lacy was there; but he does not know whether O'Shanley was there at that time or not. Ford had the main guard—I see I mistake, Ford was not there.—The punishment was in the sight of these several officers I have named; he did not hear any thing said but "strip," when Armstrong was called up;—he did not hear it, if any thing was said;—that Ferrick the surgeon was there some part of the time, and on the inside of the circle when Armstrong was punished; that he was there certainly at the close of it. The hospital was not a quarter of a mile off; there was something of a hill in the way to it, and that Armstrong was walking himself when he saw him going to the hospital.

Examined again upon the part of the pro-

secution, he was asked what should induce him to come and acquaint the governor they were coming a second time, he said it was after they had been sent back the first time, and seeing them come again, he thought it was his duty to tell the governor, and that that was the cause of his acquainting the governor. Now, you observe that Mrs. Lacy must have been much farther off than he was, if she was within the house, and he was outside the gate; he says that this outside gate is at the extremity and beyond a broadish court yard, and that there was that distance between the house and Armstrong when the governor called to him;—when the governor called to Armstrong, he (the witness) was within a few yards of the gate, and thinks the expressions could not have passed without his hearing them, which he swears he did not; he thinks they could not have passed without his hearing them if they had been used, or it must have been when they turned their backs and were gone off; but while he was standing there, and their faces were turned towards the governor, he positively swears that no such expressions, as those attributed to Armstrong, were used, and that if used while they were in that position, he must have heard them; but if used at all, it must be, as he conceives, when their backs were turned, and they were preparing to go home. Upon being asked again, at what period the officers came, he says, not till the dinner bell rang; that he was distant from the governor, when he took the sentinel's bayonet from him, as far as the end of this court. Such, gentleman, is the evidence of Lewis. I have pointed out to you, as we went along, some of those principal circumstances, in which other witnesses meet him, as you will find by-and-by, whose credit you will have to weigh against his.

The next witness, Roger Moore, a private also at Gorae in the year 1782, says, he served between two and three years; that he was present, and himself paraded upon the 10th of July one thousand seven hundred and eighty-two; this was between four and five in the afternoon; he tells you he saw the prisoner after the parade was formed; the prisoner ordered lieutenant Fall to form a circle; he saw the officers in some consultation for some time; that captain Lacy, lieutenants Fall and O'Shanley, and the governor were within the circle; that the witness was in the second rank; that he was not near enough to hear what passed among the officers; he did not see Armstrong either speaking or spoken to, before he was called out of his place; and that he (Armstrong) was not near the officers; he was upon the right, but not very near where the officers were. The prisoner was the person that called Armstrong out of the ranks, and represented him as the head-ringleader of the mutiny; so that, according to the testimony of Moore, the prisoner did charge him as the

head ringleader of the mutiny; that Armstrong made some reply, but so gently that he did not hear it. That he was quite close to the officers; that after some little time, the timbers of a six pounder were brought into the circle; Armstrong was tied up by governor Wall's order. The witness heard the order given by governor Wall for him to be tied up and punished; he was stripped, before he was tied up; the governor desired the linguist, to instruct the black man how to inflict the punishment; there were about three or four, they did not belong to the regiment. Armstrong was punished with a rope; that rope at a distance appeared near upon an inch rope; there was no knot that he perceived, or ever knew or heard of; that he counted 800 lashes, and the blacks who inflicted the punishment were changed as regular drummers in a regiment, each gave twenty-five strokes; he saw him walk away to the hospital; he died in the space of four or five days afterwards; he saw him carried to be buried; he saw no tumult, more than that the men in the morning were dissatisfied for not receiving money for short allowance; that there was no riot or tumult, no more than talking one with another at the barracks; they represented to each other that as the governor, lieutenant Fall, and ensign Deering were going off the island the next day, if they had not a settlement before that, they should never have any thing; that they had had short allowance for some months, and he heard no order for settling the short allowance. The witness himself went to the water side; he did not see the men go up, but afterwards they were overjoyed to think they were to have a settlement. That Armstrong said in public to the three different companies, that the governor said he would see every man righted before he left the island. That from that time to the time of the punishment, he saw no tumult; that they had been quite quiet and orderly from the time of that public declaration, as far as he saw or heard. The parade was ordered sooner than usual, and the men turned out some in their working clothes some in their regimentals. Whilst the punishment was being inflicted, Armstrong asked for forgiveness, and said he never would be guilty of the like again. The prisoner said, he hoped it would be a warning to him. This is offered to show that Armstrong was in some measure conscious that he had not conducted himself in such a manner as he ought, and that he deserved that punishment; but, at the same time, you will consider that when a man is under the agony of the lash, he may possibly say that which he thinks may be of service to him in a moment of agony, though not true; for which reason, torture is discarded in all countries that have a rational idea of evidence; because a man will purchase deliverance from present pain perhaps at the expense of veracity. It is for you to consider these circumstances, recol-

lecting that pain will force from a man that which it does not necessarily follow is exactly true, and that he will take some blame upon himself if he thinks he can be spared from present agony. The witness says, Armstrong begged for mercy, and on the other side the governor said it would be a warning to him. He saw no court-martial before the punishment was inflicted; if there was one he never saw one like it; when Armstrong was called out, he was charged with being the ringleader of the mutiny, that was all. So that whatever degree of charge there was, it was (according to these witnesses testimony) brought forward so late as when he was immediately called out for punishment; and there was no court-martial that he saw, and Armstrong was punished in a few minutes after. He says he (the witness) was in the same condition as the rest with respect to his claims, that he never has been settled with.

Upon his cross-examination, he says, he himself was in the African corps; he heard no conversation among the men till the 10th; he never heard them say that the governor should not leave the island till they were paid; what he heard them say was, that if he did leave the island before they were paid, they never should be paid. That about eleven in the forenoon he was at the water side and returned between two and three; that almost as soon as he came in, Armstrong said, that every man would be settled with; that some of the men had drank free, was his expression; that the witness was among the inner of the two rows of men in the circle, that he could see and hear better than those who were in the outer circle; he says the governor was called by ensign Ford out of the circle, to go to the main-guard; this was during the punishment; that there was some disturbance with the sentry at the main-guard, that he does not know what it was—it was distant from the parade about thirty yards; he saw no man without the circle that was guilty of any disorder. That Evans, a soldier who was in liquor, was confined before the parade was formed, and that the drummers were in the different companies on the parade as usual; he had seen no cat or pieces of that instrument on that day; that the governor saying "he hoped it would be a warning" was said loud; that had he said any thing about cutting his heart and liver and that, he must have heard it, but he speaks to no such fact as this which the preceding witness had spoken to.

Examined again on the part of the prosecution he says, that liquor was given by Deering to the men in lieu of pay; this was to account for some of these men being in liquor.

Thomas Poplett, lieutenant of the regiment, says he was lieutenant in the African corps in the year 1782; that he saw the parade formed upon this 10th of July between five and six in the afternoon; that he was in the house which

was his quarters ; he saw the parade formed two deep and made into a circle ; there were several officers, the interpreter, several black men and a gun carriage within the circle. That captain Lacy, lieutenant Fall, Mr. O'Shanley and he believes ensign Ford were there ; he knew Armstrong well ; he saw him stripped and fastened to the gun-carriage, and flogged on his bare back by several black men frequently changed, he believes every twenty-five lashes ; he thinks eight hundred were inflicted ; he saw him supported towards the hospital, and was distant about forty yards on an elevation of eleven feet where he could distinctly see what passed. He believes the rope was such a one as he produced ; he could not say at that distance that there was a knot on it, but he believes there was ; he never saw any such punishment before. That the cat-o'-nine-tails was the usual instrument of punishment upon those occasions, composed of small cord ; the cords are nine in number, from whence it gets its name ; and they are generally whipped at the ends with threads, that is turned up and twisted round with a bit of thread in order to prevent its unfolding, and that the handle of this instrument is wood ; certainly a rope has infinitely more spring than a wooden handle has with nine detached cords hanging at the end of it.

He saw nothing which bore the appearance of any sort of trial, and he did not see him called out to be charged with any thing before he was called out for punishment. That captain Lacy is dead some years ago, but was alive however in 1784, and then commandant at Chichester on the return of the corps to England. That lieutenant O'Shanley died in the transport on his passage ; he himself arrived about the 24th of February 1784. Ensign Ford, he has heard, died a little time ago ; and lieutenant Fall he has heard died in the Fleet-prison, he came home in September 1783, but he does not know whether he was alive or not in 1784. That the blacks belonged some to the inhabitants, some to the king's works. That drummers inflict the punishment ordinarily. That he saw no mutinous disposition on the 10th, and had no reason to believe there was any ; he knew Deering the commissary ; he is not sure whether he is living or dead, and don't know that he has spoken to him these ten years ; he himself was at that time, on the 10th of July 1782, in a certain state of confinement ; he was a prisoner at large under sentence of a court-martial, but that the sentence of that court-martial was overruled, and he was afterwards restored by his majesty ; he says he could see distinctly what passed on the parade but he had no means of seeing what passed at the governor's because he himself was not there. He then proves the prisoner's hand writing to three letters, which will be stated by-and-by.

Peter Ferrick is the next witness ; he was

the surgeon of the garrison ; he says, that on the 10th of July his quarters were very near to the governor's house ; that he saw the governor first that day on the evening parade, being sent for about an hour before sun set ; the circle had been formed,—you will observe that the governor was there, and captain Lacy, lieutenant Fall, lieutenant O'Shanley, and ensign Ford ; that Armstrong was in the act of being punished when he arrived ; that no conversation had passed between him and the governor or the officers before ; he came, being sent for ; that when he came, the governor told him this was a damned mutinous scoundrel ; that he must be punished. That is a circumstance which tallies with his having come after the punishment had begun, because you will find that witnesses afterwards contradict that ; he says, nothing farther passed : that the Negroes were employed to inflict the punishment, and he observed the instrument was a rope ; several persons were employed in flogging, each gave twenty-five lashes as usual ; that he the witness looked on, he did not count, but he understood Armstrong received about 800 lashes. He himself made no representation with respect to the severity of the punishment, or the inability of the man to bear it ; nor was there any farther conversation. That the man made no more noise than is usually made by persons under punishment ; that he attended the man after the punishment, and that he lived to about the 15th ; that he attended him twice a day, that he has thought from that time to this that the punishment was the cause of his death. He says, that he felt within himself that he was called upon to observe the state of the punishment as it went forward, but that he made no observation to the governor. He says that he saw not the smallest appearance of disorder or mutiny, nor ever heard of it till a few days ago, at the privy council ; he visited Armstrong on the day on which he died, but he does not recollect any thing that was said by him.

Now, Gentlemen, the circumstance with respect to the surgeon's not having previous information of the punishment is unquestionably a circumstance which deserves consideration ; but I think it necessary to tell you, that if a punishment is inflicted, unusual in its circumstances, either as to quantity or the instrument with which that punishment is inflicted, it will not take off from those who inflict that punishment a great degree of responsibility, that a thing novel in itself (as the surgeon tells you it was) did not present to his mind (at that time unacquainted with that species of punishment) the ideas which reflection, conversation and more experience have since given to him.

I take it, that a punishment by a regimental court-martial must be such a punishment (as I stated before) as experience shows that men ordinarily can bear. It is usual, even

in the infliction of such ordinary punishments, that the assistance of surgeons should be called in, where the punishment is intended at the outset to be only such as experience shows us is never, without a very singularly unlucky accident, attended with death—even where death is not to be expected, from abundant caution, the surgeon attends. But if he sees that punishment going to an extraordinary excess, not by the usual tearing off the skin or the surface of the muscles, &c. but by unusual means; in such a case as that, notwithstanding the surgeon attends, and notwithstanding he does not interpose and make representations upon it, they who inflict the punishment, if it should be most inordinate in its quantity or in the manner of inflicting it by the nature of the instrument or otherwise, may, under certain circumstances, not exculpate themselves. That is not conclusive; at the same time, it is a circumstance well worth the consideration of a jury, that a medical person stands by without interposing, who may be supposed to have more general skill than others, though he never saw that particular species of punishment inflicted, and was not aware of the difference between bruises and the effect of scourgings, whether this may not be a justification or extenuation of other persons who inflict it in an extraordinary degree or manner or both; or whether common sense, on the other hand, will not tell any man that 800 lashes with one species of instrument is a great deal more severe than with another. There is a great chance, he says, of a man's dying by 800 strokes of such an instrument as that produced;—the effect of it is to bruise, and it does not cut;—and mortification is more likely to ensue from it, than from the ordinary instrument.

He then mentioned that this instrument—the effect of it being to bruise and not to cut as the ordinary instrument does—was the cause as he says of his being deceived;—by that I apprehend him to mean, not being able to judge so well of the effect as he should have done if the ordinary instrument had been used; he says that there were bruises; but very little cutting comparatively to the ordinary mode of punishment;—he remembers that the effect which it produced upon the body of the man was to occasion his passing blood in the ordinary way that he passed his water, and in another way;—that the deceased had something of an asthmatic complaint, a shortness of breath which he conceives arose from the absorption of the blood which had been let loose by these bruises. That he, the witness, had been in the profession and settled for himself only two or three years, and he was then twenty-three or twenty-four years of age, but he appeals to the experience he has since had, when he describes the different effects that an instrument of this sort which acts by bruising may have from that which acts by cutting.

Upon cross-examination, he says he did not know that this was so dangerous an instrument as his experience since has taught him;—he had no medical experience with respect to the application of a rope, instead of a cat-o'-nine-tails;—he thinks he saw Armstrong that very night;—that the climate is unhealthy;—that voiding blood with the urine is not a disease of the country;—he says, he has never doubted, from that moment to this, that that whipping was the cause of Armstrong's death;—that it is not a climate for opening bodies,—that was the reason why he did not make any examination of his inside;—he himself should have forbidden the use of strong liquors;—that it would be a dangerous thing to use them in the condition Armstrong was in.

Upon re-examination for the prosecution, he says he has no reason to think he did use them; that before he received this punishment, he was in so good a state of health that he had never been in his hands at all.

William Rosser says, he was at Goree in the year 1782, and assisted the surgeon in the hospital; he remembers persons brought there upon the 10th and 11th of July, after having received punishment; he attended them during the whole time they were there; he remembers Armstrong well; as soon as he came in, Armstrong said he had been punished by black men by the order of the prisoner, and that he should die of it; he said this at no other time but upon that occasion; that he grew worse and worse; his back was exceedingly bruised and swelled and as black as a new hat; he appeared to be in a dying state from the time he came in and he grew gradually worse from that time.

Upon his cross-examination he says Armstrong drank no spirits but the garrison allowance, that was half a pint of brandy or one pint of wine each day. He cannot answer for it that he drank it, he did not examine his bottle, but that there it was, and if he had been inclined to drink it there was nothing to prevent his drinking it; but he can say no more than that the garrison allowance was sent in, and he might drink it if he thought proper.

The next witness was John Butler, who was serjeant major; he says he was part of the African corps on the 10th of July 1782; that there was no mutiny; that there was no court-martial held on Armstrong; no drums placed in the middle of the circle; that the drums at the same time were beat by the drummers at roll-call, and he has no reason to believe that the drummers could not have done their duty on that day as well as any other.

Richard Besson, a serjeant of artillery, was next called. He says, that the day before the governor went away from the island of Goree, several soldiers of the African corps came to him, and told him it was the governor's order, that he the witness should make out an account of what was due to each man; and when he had made out that account, he him-

self gave it to the governor. The governor took it, and nothing of any consequence passed; this might be about twelve or one o'clock; some money of the same sort was due to him, and that was not settled.

By his account, therefore, you find, that upon being informed by the men that it was the governor's pleasure, subservient to a settlement with these men, that he (who perhaps was somewhat conversant in accounts) should make out the account, he did make it out, and put this account into the governor's hand who at that time made no objection or observation upon it at all, but took the account as a man would whose order had been that such an account should be made out. Nothing passed about mutiny at that time, or that these persons were behaving in a disorderly manner; but according to this witness he so made out the account, and it was received without any observation.

John Clarke, a private in the African corps, says, he knew of no mutiny on the 10th of July; that some of the men were going to Mr. Deering's to ask for their rights that were due to them; that Armstrong was leading them; that they went back afterwards, and no objection was made at all; he heard none; he says there was no mention at the barracks, nor till the time of Armstrong's punishment, of any thing of the kind, and they were quiet and orderly.

Upon his cross-examination, he says when they first went to the commissary's house there might be twenty or better; that this was about nine o'clock; that they walked in rank, and Armstrong was at their head, and he was the person who gave the word to march back; that he himself did not go the second time; that corporal Upton headed these people the second time. Armstrong, when he returned, said, that the governor would see things settled.

David Powell, another private man in the African corps, says, that he was there on the 10th of July; he observed no mutiny, or disposition towards it: that he went up to Deering's (that was the first time); that Armstrong was with them, to the best of his knowledge; the orderly serjeant said something to the men, upon which he went back directly; he says he did not see or hear any thing riotous or mutinous.

Then are read the letters of the 26th of August 1782 to the right hon. Thomas Townshend, then secretary of state—Call up Powell again.

[David Powell called again.]

Lord Chief Baron Macdonald.—Do you know who was the orderly serjeant, upon the 10th of July? you said, he said something to these men who went up to the commissary, and they went away?

Powell.—Evan Lewis.

Are you sure of that?—Yes.

[John Clarke called again.]

Lord Chief Baron Macdonald.—Do you know who was the orderly serjeant upon the 10th of July that you have been speaking of?

Clarke.—I cannot remember indeed.

Lord Chief Baron Macdonald.—Gentlemen, such is the verbal evidence on the part of the prosecution. In addition to this there are some written documents. The first is a letter dated the 26th of August 1782, written by the prisoner to the secretary of state at that time, namely, Mr. Townshend; and the inferences from this letter, which are offered, on the part of the prosecution, to your understandings and judgment are two-fold. The first is negatively, that in this letter there is not a word of what is now represented on the part of the prisoner; namely, that the garrison was in this very disorderly state, that in the prosecution of claims, to which he was no ways subject, bayonets were put to his breast and the people's behaviour tumultuous, in the way the evidence for the defence represents to you; that in the report he made of the state of the settlement, there is not a single word to that effect. And positively, that from the garrison which is represented as being in such a state two officers came home at the same time with the governor; and from thence the inference which is offered to your understandings is, that the settlement could not be in this disorderly and mutinous condition; for if it were, so large a proportion of officers would not have returned: but if they did, the governor, leaving the settlement in such a state as that, would have thought it his first duty to report it to be in that situation and condition.

[His Lordship read the Letter.]

Gentlemen, you see from this letter, that there were short allowances during governor Wall's time, as there had been during that of the preceding governors. He states some differences with some of the people in the settlement; he gives a minute account of the state and condition the French settlement was in; had there existed any mutiny of the size mentioned now in evidence, it would have been very natural to have put that even foremost in the state of a settlement; it was certainly as material as to state the want of bedding, &c. And in a note, he states persons in arrest under the sentence of a general court martial; therefore it would have been most natural, had there existed such a mutinous disposition of mind in the garrison, to have stated that also; but there is nothing of that sort in this letter.

The next letter to lord Sydney was on the 15th of October.

The proclamation has been read offering a reward for apprehending the prisoners who had been, as he himself states, in custody of one of the messengers of the council board, and, for reasons stated by him, absented him-

self; a proclamation was issued, and some months after, this letter was received by lord Sydney, written by the prisoner.

[His Lordship read the Letter.]

Then, gentlemen, from that period, till within a very little time, just till the 6th of October last, the prisoner was not forthcoming, nor did he apply to place himself under the laws of his country, as he had said he would do; but upon that day, lord Pelham, his majesty's present secretary of state, received this letter.

[His Lordship read the Letter.]

Gentlemen, one witness was called, after these were produced, to show that no proceedings of a court-martial upon this man Armstrong were to be found in the office to which they would have been returned in this country. At the same time, it is proved by the same witness, that the proceedings of the sort of court martial which is alleged to have been held in this case, were not to be found there, because they would not in the ordinary course come there. This is the evidence upon the part of the prosecution.

Upon the part of the Prisoner, the topics of his defence, as he has stated, them are these; and you will be to consider how far they are proved by him, or how far they are disproved, weighing the testimony for the prosecution against the testimony of his witnesses.

He tells you, it was necessary for the preservation of his life that he should return to this country. That upon the 10th of July, all the persons not upon duty came to his house, and made a demand of arrears for short allowance due to them in captain Adams's time. These he was under no obligation to pay. He explained that very fully to them, and in a very short time they dispersed and returned to the barracks. At two o'clock they returned again intoxicated, he ordered Armstrong to march them back again; he said, "he would be damned if he would until it was settled," or, "the demand complied with;" he then ordered them himself to face to the left and march off to the barracks; to which he was answered that, "they would be damned if they would not break open the stores, and satisfy themselves." That if they had done so, he had no resource nearer than England; he begged of them an hour or two to consider of their proposition; that they acquiesced, if he would not leave the island till the business was settled. Armstrong then marched the men off, shouting and making a great noise, and saying that "they had gained the victory." He himself sent for the officers, and walked out to know whether those upon guard would support them; he met Armstrong and several men, who said to him again "that he had promised he would not leave the island without its being settled, and that he should not go to

the water side," Armstrong said, "till he had fulfilled his promise." That he returned and found the officers in his house, who agreed that immediate punishment was necessary.

That he sent Mr. O'Shanley to tell the drum-major to have what cats there were ready when called for. That Mr. O'Shanley reported to him from the drum-major, that the cats had been destroyed, and that he had best get away as soon as he could; that the men would not suffer any punishment, and they were all agreed. That captain Lacy proposed the punishing them by means of the linguist and his assistants; and this proposition was acquiesced in by the rest of the officers. This consultation took up till about four o'clock. He sent captain Lacy down, and said he himself would proceed to the main guard, that the men might not be alarmed; that when the parade was formed the officers arrived, and the circle was formed. That he then asked the men publicly, if they had any thing to claim of him; one man said he had some arrears due to him from captain Adams; he called upon Armstrong, who had no claim on account of those arrears, to account for his mutiny. When Armstrong was standing forward, ensign Ford came from the main guard to inform him (the governor) that a man was breaking his arrest, and coming towards the parade. That he asked Ford if he could not confine him, and that Ford told him he could not, for his guard would not obey him. That seeing no time was to be lost, he (the governor) went to the main guard, leaving captain Lacy on the parade. When he arrived there, this man retired behind the guard, as if he expected support from the guard. That he forced him into the guard-house, and was following him in to see him well secured, when the sentry clapped the bayonet to his breast, saying he should not enter. That he however struck that bayonet out of his hand, and made that man prisoner along with the other man, whom he was desirous to have confined. That he then returned to the parade; that he ordered the artillery upon the parade, being afraid of the African corps; the artillery never before paraded with the African corps at a punishment; that he ordered captain Lacy, lieutenant Fall, and lieutenant O'Shanley to form a court-martial, and Mr. Ferrick was at this time on the parade. [Ferrick swears he was not upon the parade, but came afterwards]. Armstrong was brought forward and charged by him (the prisoner) with the mutiny, and that he chose not to take his life and bring him to a general court-martial, but to try him by a regimental court-martial, which has a discretion to inflict an inferior punishment. Whilst they were trying him, he himself went out of the circle; captain Lacy came, and reported to him that the court had sentenced Armstrong to receive eight hundred lashes: that he returned into the circle, and told this to Armstrong; that it was inflicted by

the linguist and his assistant with a small rope's end, and that this rope's end was produced and shown to the surgeon before Armstrong felt it, and the surgeon approved of it, saying it was not so bad as a cat of nine tails; the surgeon, gentlemen, denying any such thing, and saying that he was not there till a few strokes had been inflicted; a couple of dozen perhaps, but he undertakes positively to say that he was not there till the infliction of the punishment had begun. The prisoner says, that the African corps had not halberds, and they always therefore tied the men up to a gun carriage. That Armstrong showed no concern after the punishment, and very little appearance of punishment; that Armstrong on the evening that he was taken to the hospital drank spirituous liquors so as to be intoxicated. The man who attended the people at the hospital does not speak of any intoxication, and as he attended him with considerable assiduity, if he had drank to such a degree as to get intoxicated it is more than probable he must have seen it; he says his garrison allowance was sent him, but whether he used it or not he cannot tell. However, the prisoner says he drank it even so as to be intoxicated. He (governor Wall) thought it necessary to the saving his life to get away, the climate being very bad, and he having been for a long time before very ill. That he arrived in August in the same year. That upon his arrival, he found that some charges had been exhibited against him at the secretary of state's office, which were tried ten months afterwards. That has nothing to do with this; Mr. Crawford succeeded very ill in his charges, for he was reprimanded for having charged his superior officer. He then went to Bath; two messengers came down; he asked the messengers if they had any warrant; they said that they had not; he went with them to Reading, and there thought it best to leave Reading clandestinely, at about eleven o'clock. He did not know what the charges were, and he thought it dangerous to appear at that time, from the persecution he had met with before, the papers being filled with false paragraphs stating that he had fired men from the mouths of cannon and the like, and he conceived mens minds to be so prejudiced against him by those paragraphs in the newspapers, that he thought it fit to withdraw himself, and to meet the charge when men were cool enough to listen to the truth without prejudice.

This is stated by him to have been the reason for his absenting himself at that moment; but you find, that absence has extended itself to eighteen years from that period; during which time, these wicked paragraphs (for whether true or false they are very wicked respecting a man under charge) must have ceased. You will judge whether so long a time was necessary to let the effect of such calumny evaporate.

The first witness he calls, is an important

one in this case; and it will well become you to see what degree of credit is due to Mrs. Lacy; for a great part of her testimony is entirely to cut up by the roots the testimony of Lewis, which I stated before was considerably valuable, because if true, he actually attended upon the governor during the whole of this day, and if they are successful in contradicting Lewis in those circumstances, which he states as the *causa scientie* of what was going on minutely on that day, that he was employed in messages to the mutineers, as the governor states them, to be sure little credit is due to him, if he is overborne by superior testimony supported as he is by one or two men in that corps, who decidedly confirm his being in that situation that day.

Mrs. Lacy says, she is the widow of the late captain Lacy who succeeded the prisoner as governor of this settlement; that she was in the island the day before governor Wall left his government; that she resided in the government house; that the soldiers came to the government house in a body, to demand short allowance money due from governor Adams; that Adams was the governor who preceded governor Wall, and that the chief of the African corps composed this body of men (you will observe gentlemen seventy or eighty), and this about nine o'clock. Hitherto we have heard of no more than between fifteen and twenty, or between twenty and thirty, but she says there were the chief of the African corps, seventy or eighty;—that she knew Armstrong's person; that he headed these persons; that they stopped opposite the government house, and spoke to the governor. —There is no intervention of the orderly serjeant here;—that they threatened, and swore they would break open the stores to satisfy themselves, if he did not satisfy their demands; that the first time there were not so many as the second; she spoke of the second time first; that the governor went out himself, and desired them to go quietly to their barracks, and he desired time to consider of their proposition; that he did this in person, not by any messenger; that they demanded the money due to them from governor Adams; he desired them to go quietly, and give him time to consider; they went away to their barracks; that she saw them again in about an hour and a half, headed by serjeant Armstrong, Upton, and Patterson; and again she repeats there were seventy or eighty men; that they came in the most riotous and mutinous manner; that from their manner she should not suppose they were sober; she saw them only when they came to the governor's house; she heard them swear they would open the stores, and satisfy themselves.—That the governor was the person who went out to them; that she heard Armstrong as well as others swear as she has stated; that they went off shouting and making a great noise, in every state of mutiny was her expression; it was generally

known that the governor was going to depart. They said they would not let him leave the island, till they were satisfied; that Armstrong, Upton, and Patterson were the persons who spoke this; they spoke it in a most threatening manner, in an alarming manner, she herself apprehended mischief; that it might be a quarter of an hour before the governor appeased them; that they went away, shouting, hallooing, and threatening the governor; that the governor sent off lieutenant O'Shanley to captain Lacy and lieutenant Fall, who came to the government house. This, you see, she represents to have been a message sent, through the medium of O'Shanley, to bring these officers; the evidence on the part of the prosecution being that they did not come till the dinner bell was rung. That the governor told them of this at dinner time; she heard him; they all agreed not to confine the men then, lest it should increase the mutiny, but to point out the ringleaders one by one, and try them by a drum-head court-martial. That the governor sent Mr. O'Shanley to have a cat ready when it should be called for, and that he reported that all the cats were destroyed in the morning, and he was certain that not one of the men could be punished, and the governor had better depart as fast as he could. This was the report brought back by lieutenant O'Shanley, captain Lacy proposed to have the men punished by the linguist and his people; that the reason assigned for this was that it was reported, that the drummers were in the mutiny; this is to account for that punishment being inflicted not by the ordinary hands, the drummers of the regiment, but by strangers, because lieutenant O'Shanley is stated to have reported that the drummers were concerned in the mutiny, and that no man could be punished. That she saw the officers leave the government house, that they went down to the parade, and the governor said the trial must take place on the parade. The governor went to prepare for the trial, leaving the officers in the house; captain Lacy desired them to have the linguist ready, and he himself would prepare the parade; she saw the linguist come to the governor's house, and depart together with the officers.

Upon her cross-examination, she says, she had taken possession of the government house as she was to succeed to it the next day, and considered it as her own; and that accounts for her being there and continuing there. She says she has often visited the governor here, but never staid with the governor here all night. That there was no short allowance in governor Wall's time that she knew of, which is a circumstance contradicted by the letter written to lord Sidney, then Mr. Townshend, in which he himself states that there were some arrears, whether considerable or not does not appear. She says she does not know of any complaint of

arrears which were detained from them by commissary Deering; that she knew of no demand having been made upon Mr. Deering. That Lewis was not the orderly serjeant on that day; that Carney was the person who she thinks was the orderly serjeant; she has never seen Mr. Deering since she came from abroad; that she knows from the prisoner that he is living, but she does not know where he is; that he was commissary; that the men were not more distant from her than the counsel to whom she pointed on this side of the bar was from the place where she stood. That there is a court yard as large as the circle we are in, but not so large as this court; that the windows were open, as they always are in so warm a climate; she is sure they spoke loud enough for her distinctly to hear; that those are the words she heard; that each of the persons swore that he would break open the stores; she was in the same room with the officers all the while; that she does not remember that she made an affidavit with her husband at any time; that her husband had a coup de soleil occasioned by the vertical sun, which occasions in a great degree a derangement of mind; that they remained in Africa about a year and a half; they arrived here about the beginning of 1783. That he received then his half pay himself; that he lived at Cork afterwards; that he did no business there. She is then cross-examined more as to her having said, that this coup de soleil was the cause of a sufficient want of understanding in her husband (which she directly said) to render him a competent witness to be produced in any court of justice; she says that she was taken too quick—that he never was fit to be produced as a witness after this coup de soleil, and that he made no will; she says also that she is certain Lewis was not orderly serjeant that day.

One great object of her evidence is to apologize for the prisoner not having taken his trial when captain Lacy, lieutenant Ford, and lieutenant Fall were all living and forthcoming, and to show that it would have been of no use so far as respects captain Lacy, because he was not in a state of mind that made it fit to produce him as a witness; how far she is contradicted in that, and how effectually, you will hear by-and-by. The next point is to show that Lewis was not the orderly serjeant, but Carney.

Lewis is confronted with her; he says he was the orderly serjeant the 10th and 11th of July, and nobody but him, and he followed the prisoner out the whole of the day, and nobody but him was orderly serjeant that day.

Mrs. Lacy says that he was not orderly serjeant that day, and is as positive in her contradiction as he was in his assertion.

Upon her cross-examination, she goes on to say she is intimate with Mr. Wall, and Mrs. Wall is apprised of all her visits here; that none can be equal to Mrs. Wall and her

husband for affection; she believes Mrs. Wall might not upon one or two occasions have been present; she says that the soldiers never, that she heard, mentioned the name of Deering, but they made their demand upon the prisoner for that which was due in governor Adams's time; she knows two persons of the name of Faulkner, man and wife.

Examined again on behalf of the prisoner, she says that her husband had this coup de soleil after he became governor, and that he continued to be governor for some time; you will hear witnesses speak to his state of mind after he became governor, and after he came over here.

Mary Faulkner, wife of John Faulkner, who is a pensioner in the artillery, says, she was with her husband at Goree in the year 1782; that she remembers the prisoner leaving the island perfectly well, and remembers what passed the day before he left the island; she was at the governor's house in the morning a little after one o'clock, she saw most who were then off duty come to the governor's house, fifty or sixty, headed by Armstrong, Patterson, Upton, and two drummers. They came in a very irregular manner; that the governor came out; she (the witness) was going past with some work to a mulatto woman; she was on the outside of the gate quite near the governor and the men; the governor desired Armstrong to march off the men; he swore he would be damned if he would, that they wanted their short allowance money. The governor answered, none was due in his time, and then he desired two or three hours to think of their proposition, and he desired Armstrong and the others to march back to their barracks; that Armstrong swore he would be damned if they would, and that they would break open the stores, and would help themselves, and he would be damned if the governor should quit the island except he paid them. That when they marched away they were shouting, and were very much in liquor, swearing that they would pay themselves. She heard some of the African corps talking together afterwards; she went to the artillery barracks between two and three, that Armstrong, Upton, Patterson, and Robinson one of the drummers and a great many of the African corps came to Besson, a serjeant of artillery (the witness who was called before on the part of the prosecution), and desired him to make out an account of short allowance; so far Besson agrees with her. That he desired them to be quiet; that they swore they would be damned if they would except governor Wall settled with them. That the serjeant told them they did not know what consequence it might end in; that it might be of bad consequence to oppress the governor. That they swore, that if he did not comply, they would take his life, or that he should not leave the island; and they said there was a friend in the island who would support them in all this,

So much of this woman's testimony as coincides with Besson, is, that they came to him and desired him to make out an account, and he said it was not a soldier-like or proper thing to address the governor in such a manner upon such a subject; but she adds that repeatedly they swore to Besson in her presence, conversing with him, that they would murder the governor, or he should not leave the island unless the demands which they made upon him, and which he was in no wise responsible for, were complied with; that is the addition she makes to so much as Besson himself admits of this transaction.

Upon her cross-examination, she says, they did not ask for money due in governor Adams's time; that her husband was gunner on the main guard on that day; that they were never on short allowance when there was provisions in the Island; but ships were sometimes taken, and then they were on short allowance. That her chamber was so situated as to enable her to hear what was said in Besson's apartment, the door being open; that what they said about taking the governor's life, or not permitting him to leave the island, was said in Besson's presence; she says that Lewis was not orderly serjeant, but Carney was orderly serjeant; that Carney, as such, was busy in getting the stores on board; that Lewis had been a corporal and been broke, and wanted to be a gunner.

Lewis is called again; he says he was broke when a serjeant, but that he was lance serjeant at this time, and not broke during the time of this transaction, but in governor Lacy's time.

John Faulkner (the husband of this woman) says, the day before the governor left the island, he was gunner on the main guard; that he saw the governor at twelve o'clock coming down the parade; that he saw him afterwards at the guard house; that a soldier of the name of Fawcett was sentinel at the guard house; that Patterson was afterwards put in custody, between four and five o'clock, just about the time the ring was formed; ensign Ford came, and told the governor there was no keeping Patterson in the guard house; the governor came over, and chastised the centinel for not doing his duty: the governor endeavoured to turn Patterson back into the guard room, out of which it seems he had got beyond the door; the man who was the sentry (Fawcett) stopped the governor with his bayonet; he displaced the sentry, and knocked the bayonet out of his hand, and made him a prisoner, desiring lieutenant Ford (the officer of the guard) to confine him; that Fawcett said, "he was damn'd sorry that he had not run the governor through the body." The witness was then ordered to join the artillery upon the parade; that it was not usual for them to parade with the African corps; that he (the witness) went to the parade, all his corps were there; Patterson, when on the outside of the door,

was going towards the parade; he thinks there must be something said about joining the rest, but cannot say what it was; he himself formed part of the ring; captain Lacy, lieutenant Fall, and lieutenant O'Shanley were in the inside of the ring, the governor was outside; that Armstrong was called forward, and asked what he had to say in his own defence; that he made no reply; that captain Lacy asked what he had to say for himself being in this mutinous affair; that he made no reply; that captain Lacy told him he was tried for stopping the governor from going on board, and threatening to bring his stores on shore; that he (the witness) saw the surgeon there, and the linguist; captain Lacy told Armstrong, he was to receive eight hundred lashes by the linguist; he was then tied up, and received those eight hundred; the surgeon was present the whole time (this the surgeon denies); and that he saw Armstrong walk away with his shirt about his shoulders. That about twelve he saw Armstrong, Patterson, Upton, the drummer, and several others at the governor's, he does not know what passed; that some who were off duty came over to the guard house, and then some of their comrades asked, "how did you come off?" that they told them that they were going up to the governor's; and they said, "we will stand by you." The witness tells you he is in the occupation of a carpenter in Woolwich-yard, and pensioner to the Ordnance.

On his cross-examination, he says, lieutenant Short was his officer, Besson his serjeant, and there were six men besides; that the serjeant was ailing at the time; that four or five of the artillery attended the parade; that they were mustered on the parade, as they usually are; that they were in the front rank, and the governor was not in the inside of the circle. He says they examined no witness to prove any thing. Captain Lacy called Armstrong by name (the other witnesses had represented that it was the prisoner who did so) out of the ranks; for aught he knew it might be governor Wall, he thinks however it was captain Lacy; he did not go back into the ranks again, till he was punished; captain Lacy went outside the ring to speak to governor Wall. Captain Lacy told Armstrong he was sentenced to receive eight hundred lashes; governor Wall might tell him that for aught he knows; while they held a court-martial it might be a quarter of an hour, or half an hour, or less than a quarter of an hour; that they were consulting among themselves; that he does not know whether every one in the circle heard it. He (the witness) was pretty near, and heard what captain Lacy said. That the bayonet was presented by the sentinel when they were forming the parade, and that lieutenant Ford called governor Wall away; both Ferrick and the serjeant were there before the punishment; that Ferrick came with the officers, and only two men were

employed by the linguist; that he saw sixty or seventy lashes before they were changed, the other witnesses say twenty-five; he saw no more than two employed in this work; he made an affidavit at the Mansion-house, but the person who applied to him for it was a stranger to him. The lashes were given with a line not much thicker than a little finger, and not so thick as that shown him, only a half-inch rope; that which is shown is an inch rope. You observe that that which is shown as a rope similar to that which was used was put into the pocket of the witness Poplett, at the time, as being similar to that which was used; and he undertakes to swear positively that the rope was of the identical thickness with that which he produced; this witness however attenuates that rope, and makes it a rope about the size of a man's little finger.

Peter Williams, a non-commissioned officer of artillery, was there on the 10th of July; he was sent for, at different times, to the governor's house in the course of that day; that the African corps constituted the greater part of the garrison; that he saw, about eleven o'clock, a dozen of them parading before the governor's; all the witnesses for the prosecution having made them about fifteen or twenty, or perhaps something more, and Mrs. Lacy and the other woman having made them the one seventy or eighty, and the other sixty or seventy. He says the orderly serjeant had come to him before and after; to the best of his recollection, that was Carney; that he heard them make a demand upon the governor, for some short allowance money; there was some altercation; then the governor ordered them to their barracks but they would not go. They came to the governor's an hour or two after; they were then rather more than at the first time. Armstrong was in the first and in the second message to the governor's house, and Patterson and Upton were there, and they were the persons who talked the most; that he distinguished the two drummers of the African corps the second time; that they went to the governor's house, they insisted the governor should comply with their request, in a violent sort of manner; that Armstrong and Patterson in particular said, "they would be damned if he should leave the island, till their demands were complied with;" that more might say so, but with respect to those who were the principal spokesmen, they did so; that the governor ordered them to face to the left and go to the barracks, which they did, but seemed very much dissatisfied; that they went away in a very disorderly manner, in a clamorous noisy manner, and that they came up a third time; he cannot say whether there were more or less than before; that they made the same demand and met with the same refusal; that Armstrong, Upton, Patterson, and the two drummers he observed in particular; that they then swore, "they would be damned if they

did not break the stores open and supply themselves;" the governor desired them to go home and give him a small space of time to think of it; upon which, they went away but made a noise and hallooed; he afterwards saw a circle formed upon the parade, and saw Ferriek, the linguist, and the officers he named before, within the circle; he himself was on the outside, and formed no part of that circle. Governor Wall came inside the ring, and charged Armstrong with being a ringleader of the mutiny; that this was in the presence of captain Lacy and the other officers assembled there; that Armstrong was within the circle; the governor ordered captain Lacy and the other officers to form a court-martial, and then went outside the circle; that he did not hear either of the officers say any thing to Armstrong; he saw captain Lacy come out of the circle, take his hat off to the governor, and say something to him; he then came into the circle, and then captain Lacy and the governor told Armstrong the court had sentenced him to eight hundred lashes, to be inflicted by the linguist with a rope's end; so that that is the sentence the court-martial pronounced, and he directed eight hundred lashes to be inflicted by the linguist and his people with the rope's end. He saw this sentence executed; that he believes Armstrong received the whole; that he saw him afterwards leave the place to go to the hospital, and that he was not supported by any body.

On his cross-examination, he says that Carney was the person who was said to have been the orderly serjeant; he does not know Lewis; he may have known him by sight, but does not know any such person by name. He saw no message carried from the governor to the men; that the governor's and commissary's houses are near each other; he (the witness) had a demand for this allowance money, but he was paid, and paid in a different manner, being an artillery man. That all the garrison had a claim for short provision; the governor refused to comply, but said nothing about the justice of the demand. That the men had no arms; that they went away when they were desired all the three times; that they came, in all, three times, the first time, about eleven, then about two hours after, then about an hour after the second time; that the witness was sending the governor's baggage off, and the governor, when the witness came up, was outside the circle. Armstrong was standing as a prisoner not forming a part of the circle. That he was not in the ranks when he came up; he was flogged in less than half an hour; that he heard no one speak to him but the governor; he did not hear captain Lacy speak to him; that he might not have heard him if he had spoken to him; that he never saw a man punished with a rope's end before; he thinks there were only two persons employed in punishing, to the best of his recollection; he cannot say how

many strokes each of those persons gave; he was three years at Gibraltar after he came from Goree.

Examined again for the prisoner he tells you, the governor conferred with the men in person, not by any messenger: that they were close to the government house with their backs towards the commissary's; that he never knew more than seven hundred lashes inflicted in governor Adams's time with a cat; he has himself been wandering about a great deal to Gibraltar, America, Flanders, and then he went to Holland. This is the testimony this man gives, whose character is spoken to by-and-by in the way I shall state.

Charles Timms, a private in the African corps at this period, says, that at about two in the afternoon he had occasion to go to the barracks to fetch some things to help cut up a bullock; that he saw Armstrong and Symonds a drummer, and that they cut the cats to pieces; he went into the hospital about eight at night, and saw the deceased Armstrong drinking, and he is certain it was spirits.

Upon his cross-examination he says, it was between eleven and twelve that they began the mutiny; that he saw them all in a cluster when he went to the beach to kill the bullock; that there were above thirty; so that he carries it no farther than thirty, from what he saw of it; that he came home in the year 1784 with captain Lacy, and the rest of the corps; that captain Lacy commanded it when they came to Chichester, and that he was hearty as before.

This last was an examination gone into, for the purpose of answering the testimony that Mrs. Lacy had given, which she concluded by saying, in pretty nearly these terms, that the accident from the *coup de soleil*, although she had answered rather too quickly to some questions put to her, had disabled her husband from being in a state of mind fit to produce him as a witness, supposing a trial had taken place at that time. This man (a witness for the prisoner) says, that at that time captain Lacy continued at Chichester commanding his corps, and was hearty as he had ever been before; this is testimony diametrically opposite to Mrs. Lacy's account; and whether her testimony is to stand or fall is material indeed; but Timms states captain Lacy to be in a very different condition, from the time he took the command of the corps, till he was discharged at Chichester. These are the witnesses that speak to the fact upon the part of the prisoner. To his character are called many respectable persons.

General Forbes tells you he has known him for thirty or forty years; they served together at the Havannah; from that time he saw nothing of him till 1786 at Paris; the service at the Havannah was in 1763; from the time of their joint service there, till he met with him at Paris in 1786, he saw nothing of

him. That when they served together, he behaved himself extremely as a gentleman and an officer in every respect, and with perfect correctness. The degree of knowledge general Forbes has of him terminated in the year 1786, and was chiefly confined to the period when they served together at the Savannah in the year 1763.

General Mackenzie knew this gentleman from 1763 to 1770, which is a period of seven years, and saw him afterwards occasionally in town; he then considered him to be a humane, social, and friendly man as could be.

The reverend Mr. Clarke knew governor Wall at Pisa and Florence in the years 1794 and 1795, and for about two months in the year 1796 visited him there constantly; he says, that every part of his conduct, which came under his observation, gives him the idea of distinguished humanity, and that of an exceedingly good husband and good father.

Mr. William Langley knew the prisoner in the year 1788, was intimate with him for six or seven months; he says he never knew a man of more benign dispositions in his life, a gentleman brim full of the nicest feelings of philanthropy, to use his own expression.

Mr. James Forbes knew him in 1771; he says that he met him often at general Wedderburne's, and at the houses of other gentlemen of his acquaintance in the year 1771; that he met him afterwards at Rome about nine years ago, and that a better husband or father he never knew.

Major Phipps says he was six months under the prisoner at Goree; he always experienced great kindness from him.

Upon his cross-examination, being asked what his general character was there—which is the true question to be asked upon these occasions—he says as to that, that he has not heard that character of him in the settlement. Again, in answer to questions for the prisoner, he says he saw little of him after he came to England, and tells you he went out with a particular recommendation to governor Wall, and he was extremely civil to him; but he is not able to say that was his general character in the settlement.

Mr. Poplett the lieutenant is called again; he says he knew captain Lacy after his return in the year 1784, and he thought his understanding was as he had ever known it; he says he believes Lewis was the orderly sergeant upon the 10th, but that he is not certain of it. He says he knew Lacy indisposed from having drank a little too much at one time, but he was not in ill health when in England.

Mr. Ferrick, the surgeon, says that one evening captain Lacy fell in a sort of fit upon the parade; he was seven or eight days ill, and then became perfectly well.

Mr. Poplett, asked again, tells you he was a prisoner most of the time; he was originally in lord George Germaine's office; that he

was accused by a person of the name of Demorand, who printed a French paper here, of making money improperly, or rather by using improperly his situation, being in the secretary's office; that he found out who was the printer of that paper; that printer made an apology, and lord George Germaine, immediately upon that, gave him a commission. Upon questioning him as to any transactions in the funds at that time, he says that it is possible his name might be stuck up as a person that did not pay his debts, from the paragraphs in Demorand's paper; that he might have given information to one Mr. Ashburnam, but he had no dealing himself in the funds; he did not know that Mr. Ashburnam dealt, at the time he told him in general terms, that the news was good or bad, but that so much information as he gave him was official information.

Mr. Gurney.—Your lordship says that Ferrick said captain Lacy was ill for seven or eight days; I took it, he said he was *deranged* for seven or eight days.

Mr. Justice Lawrence.—That he was *deranged* seven or eight days.

Lord Chief Baron Macdonald.—I believe the effect of a coup de soleil frequently is, to turn a man's head, and make him delirious for sometime.

The next witness is serjeant Butler, who tells you that Evan Lewis was orderly serjeant upon the 10th of July.

Upon his cross-examination, he says he saw him at the gate of the government house at one, or two, in the afternoon; Carney was not orderly serjeant; he saw Lewis stationed at the governor's house, he is quite sure he was orderly serjeant that day.

Serjeant Besson is then called, whom Mrs. Faulkner represented as having been present, and as being the person to whom the words were addressed which you have so often heard, "that they would murder the governor" or "not let him go out of the island before the demands were settled and break open the stores;" mutinous and very strong expressions, and denoting a very disturbed state of things. Besson's account is, that they came to him to make out their accounts; he does not know their names, but they did not swear in his hearing that they would take away the governor's life, would not let him go out of the island before their demands were settled, nor any expressions of that nature in the least: that Mary Faulkner might be in that adjoining room which belonged to her, and the door might be open and she hear what passed. He had no order to parade that evening; he does not recollect being sick that day; he attended his duty next day; he is certain there were only six of this corps; the remaining five, it happened, were paraded that day. He then said, he told them they had better not trouble the governor, it might perhaps be worse for them; and his reason for so doing was, that it was not proper nor

soldier-like for four or five persons to trouble their commanding officer upon business of that sort.

Then is called Captain Wright; he says as to Peter Williams, whose testimony was extremely material,—if you recollect he was called for the purpose of corroborating the testimony of John Faulkner,—the character captain Wright gives him is, that he was reckoned a lying shuffling fellow; he knew him at Gibraltar, and that he should not, for his own part, place much reliance upon his oath.

Gentlemen; this is the evidence on both sides; and, as the attorney-general stated at the outset, undoubtedly the principal fact is the fact of mutiny, aye, or no;—whether any such mutiny did take place, as would put a good officer, as I said before, a man of common firmness, into such a state of alarm, as would make extraordinary means necessary instantly to quench the fire by over-laying it in the speediest way that he possibly could. The evidence on the part of the prosecution, states that there was no such mutiny; that there was indeed a degree of discontent, and some apprehension on the part of the soldiers, that the arrears due to them for short allowance would not be paid to them, if the governor went out of the island, and the paymaster, the commissary also, went out of the island; that they did go in some number to represent this to him, that is as they were going in their way to the commissary's house in the first instance and not meaning at all to trouble the governor then, but meaning to address themselves to the person with whom they were to settle; the orderly serjeant was sent to them, and some discourse took place between the governor and them; but, according to the testimony of those witnesses, that discourse was carried on in the most orderly manner, without the least symptom of mutiny. The men having learnt not many days before, that the governor was to quit the island, and the commissary along with him, their arrears not being settled, that might account for a degree of uneasiness, supposing there was no mutiny in the case; and it is stated that they went a second and a third time, but all these circumstances of mutiny are absolutely denied.

On the part of the prisoner, his witnesses state that these people did go in a menacing and threatening attitude; that they went three several times; that their gestures, manner, hallooing, every thing indeed denoted mutiny. They state, in one instance, the governor going down to the parade, and finding that a prisoner had escaped—the centinel whose duty it was to take care of this prisoner—the centinel putting his bayonet to his breast and so on,—acts highly mutinous.

Now there is so wide a difference between these two accounts, that it must be left for you, when considering the testimony that is given and the character of the witnesses, to

judge to which side you should lean; because the difference is very great between a considerable number of these men without arms, without even side arms, going a day previous to the governor's departure in an orderly and decent way, that the governor and the pay-master should not slip out of the colony without settling their arrears, and then leave them as they thought without any remedy at all;—there is, I say, a wide difference between solicitations of that sort expressed once, twice or thrice, and the appearance of a drunken mutiny of persons hallooing and whooping, going, not between fifteen and twenty, or between twenty and thirty, but sixty, seventy, or eighty in number, and behaving as the witnesses on the part of the prisoner have represented. There must be gross extenuation on one side, or gross aggravation on the other side; for two such representations as these could not be given by persons meaning to speak the truth with respect to the same transaction. You will settle in your minds, whether there really was such a mutiny as would have unhinged the understanding of a humane, well-meaning officer, and make him do the best he could in an arduous situation for the sake of the public; or whether the circumstances described by the witnesses for the prosecution are made use of now, and swelled up into a mutiny of this sort (not having in truth been of that size) in order to justify the punishment of those, who were the spokesmen in either a solicitation or a mutiny; whichever you shall think it; whether you shall think it the one or the other will be the great point for you to consider.

If there were no such mutiny, and if there were no court-martial of any kind even the best that could be had (as is sworn by the witnesses for the prosecution), and this man was, by the command of the gentleman at the bar, tied up and received so large a punishment as eight-hundred lashes, with an instrument so unusual in its nature, the effect of which is in evidence, and which must necessarily be very different from that of nine loose strings, instead of one solid elastic mass; there is certainly ground to infer malice, according to the description I gave at the outset.

If it shall appear to you that there was a mutiny—if it shall appear to you that there was such a court-martial as could be had—and that there was reasonable notice to the deceased, that he was so and so charged, and was called upon to say how he came to be one of those mutineers (as to which evidence does not seem to have been examined, the prisoner perhaps trusting to the notoriety of it, in the shape the witnesses for him say it existed, namely in a notorious shape)—I have the attorney-general's liberal authority for saying, in this case before us, that if you are satisfied of that, and do not derive from the degree of punishment and the mode in which

it was inflicted by the instrument used, a malicious intent to destroy this man, or a wilful disregard of human life;—in case you see all the circumstances in that light, you will give the benefit of such a view of them to the prisoner, and acquit him. I see no medium between that and a conviction of murder.

You will take all these facts into your consideration; and, if I may be allowed to prescribe the mode to you, settle first in your own minds the fact whether there was a mutiny; if you are of opinion there was no mutiny, there was then no ground for any thing that followed; if you are of opinion there was a mutiny, you are then to consider the degree of it, and whether there was as much attention paid to the interest of the person accused as the circumstances of the case would admit, by properly apprising him, and giving him an opportunity for justifying himself if he could, as the prisoner's witnesses have stated. Next, you will consider the extent of the punishment; whether, supposing that there might be a mutiny or mutinous conduct, eight-hundred lashes, with an instrument such as has been described, and in that climate (punishment beyond all ordinary measure when inflicted in a novel manner)

make out, in your minds, that malicious intent which I before explained, and which it is necessary you should fasten upon the prisoner, before you convict him,—or arose from a real intent to suppress that mutiny.

Taking all these circumstances into your consideration, you will do as wise men in your situation always do; if you see the case clear on the one side or the other you will pronounce your verdict accordingly; and if there should be rational, serious, sober, solid doubts in your minds of the guilt of the prisoner, you will give him the benefit of such doubts.

The jury withdrew, and in about half an hour returned with a verdict of GUILTY.

The prisoner was ordered for execution on the 22nd, and his body to be dissected and anatomised. A respite was sent on the evening of the 21st, accompanied by a notice to the following effect;—"You are to give the necessary directions that the sentence shall be executed on Monday, as no farther respite will be granted." He was, however, again respited till Thursday, the 28th, when he was executed pursuant to his sentence.

649. The Trial of WILLIAM CODLING, Mariner; JOHN REID, Mariner; WILLIAM MACFARLANE, Merchant; and GEORGE EASTERBY, Merchant; for wilfully and feloniously destroying and casting away the Brig Adventure, on the High Seas, within the Jurisdiction of the Admiralty of England; at a Session of Oyer and Terminer and Gaol Delivery for the Admiralty of England; holden at Justice Hall, in the Old Bailey, on Tuesday the 26th of October: 43 GEORGE III. A. D. 1802.*

Old Bailey, October 26th, 1802.

BEFORE

The right hon. sir *William Scott*, knt. LL. D.
Judge of the High Court of Admiralty;
The right hon. lord *Ellenborough*, lord chief justice of his majesty's Court of King's-bench;
The hon. sir *Alexander Thomson*, knt. one of the barons of his majesty's Court of Exchequer;
And others his majesty's commissioners of Oyer and Terminer and Gaol Delivery for the Admiralty of England.

* Taken in short-hand by Joseph Gurney, and William Brodie Gurney.

VOL. XXVIII.

[The Grand Jury were called over and sworn.]

Sir *William Scott*.—Gentlemen;—You are called upon to discharge the office of grand jurors for the jurisdiction of the Admiralty of England—an office of great extent in point of local authority, and of great importance in its operation. It extends over all criminal acts done by the king's subjects upon the sea in every part of the globe.—You have to inquire of such acts committed, wherever the ocean rolls;—and in the beneficial intercourse which now connects all the nations of the world, and of which your own country enjoys so fair a portion, it is not needful that I should enlarge upon the necessity of preventing, by a vigilant civil discipline, all disorders which by obstructing its peace and freedom, might endanger its existence.

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The mode of inquiry is the same which you are in the habit of pursuing in the administration of our domestic justice;—for it is conformed by statute to the practice of the common law. You have to apply the same rules of evidence, and the same principles of justice; you will be guided by the same sentiments of humanity; you will do well to remember that something of allowance is due to men of uncultivated understanding, of rough and boisterous habits, arising naturally out of their course of life, and often acting under the pressure of necessities which call for strong and even violent exertions of power—such as other modes of life do not require, and therefore are not admitted to justify or excuse.

I point this observation to your attention the rather, because I see that the calendar contains two or three charges of murder alleged to have been committed by captains upon some of their crews. It is most true, that inhumanity is not discipline; and that no murder is so foul as that which is committed under an abuse of authority; but you will recollect withal, that the safety of great property, and what is much more, of many lives often depends upon prompt and compulsive acts, and that strong acts of that nature are apt to produce strong resentments on the part of those who are the objects of them. On charges of this kind you will look into the facts with all the anxiety which the magnitude of such imputed crimes require; but in no species of accusations is it more material to inspect the characters and motives of those who bring them.

I have to congratulate you that the return of peace has relieved you from the pressure of one odious class of cases—those of men deserting their king and country, and fighting the battles of the public enemy on board his ships against the lives and property of their fellow subjects—an offence which the relaxation of principle produced by the late occurrences of the world has made unhappily but too prevalent in our own time and country.

One peculiar case will call for the most diligent application of your powers of inquiry,—the offence of sinking a ship and cargo with intent to defraud the underwriters,—an offence most justly rendered capital by statute. To you, who are commercial men, it is unnecessary to say much on its malignity; it strikes at the root of the maritime commerce, and, consequently, of the power and the security of this country, so intimately connected with the prosperity of its maritime commerce. It is owing to the property of that class of men, the insurers, who by dividing the risk, increase the security of private individuals, and give the benefit of large capitals to the adventurer of slender means, that our commerce has triumphed in its activity over all competition. But it is property that peculiarly requires the protecting vigilance of the law, for it is property out of

the possession of those to whom it belongs, and in the possession of those, for whose benefit it is indeed employed, but who may have a corrupt interest in its destruction.—The law is its protection: you will therefore grudge no time or labour in prosecuting your inquiry into the truth of such a charge, if it occurs; but you will conduct your inquiry with minds perfectly free from prejudice against the individuals charged—nothing that you may have *heard*,—nothing that you may have *read*,—must be suffered to mix itself with, and give a colour to, your judgment; you must begin and close your inquiry with ears and eyes shut to every thing but the evidence now to be adduced.

Gentlemen, I shall not detain you longer from the performance of your important duties, than by remarking that if any question of law respecting either jurisdiction or other matter should arise in the course of your inquiries, you will do well, by finding the bill to leave such question, to this court, which has more convenient and satisfactory means of deciding it.

The Grand Jury having brought in a Bill of Indictment against the Prisoners, they were arraigned, and severally pleaded not guilty.

THE Indictment set forth that William Codling late of London mariner and John Reid late of the same place mariner after the twenty-fourth day of June which was in the year of our Lord one thousand seven hundred and twenty-five to wit on the eighth day of August in the forty-second year of the reign of king George the third upon the high sea within the jurisdiction of the Admiralty of England to wit about the distance of one league from the coast of Sussex were on board a certain vessel called the *Adventure* and that the said William Codling was then and there master of and belonging to the said vessel and the said John Reid was then and there an officer belonging to such vessel and that the said vessel was then and there insured for divers sums of money amounting in the whole to a large sum to wit the sum of seven hundred pounds of lawful money of Great Britain by Robert Shedden Joseph Marryat Thomas Rider William Ness James Honyman and James Nash who had before that time to wit on the first day of July in the year of our Lord one thousand eight hundred and two at London aforesaid severally and respectively underwritten a certain policy of insurance on the said vessel

That the said William Codling and the said John Reid so respectively being such master and officer belonging to the said vessel as aforesaid on the same eighth day of August in the forty-second year aforesaid with force and arms on the high sea aforesaid &c. wilfully and feloniously did make divers to wit three holes in and through a certain part of the said vessel called the larboard rump and

divers to wit three other holes in and through a certain other part of the said vessel called the larboard quarter by means whereof the water of the said sea did then and there enter fill and sink the said vessel and that the said William Codling and the said John Reid so respectively being such master and officer belonging to the said vessel as aforesaid did thereby then and there wilfully and feloniously destroy the said vessel to which they the said William Codling and John Reid did then and there respectively belong as aforesaid with a wicked and dishonest intent and design then and there to prejudice the said Robert Shedden Joseph Marryat Thomas Rider William Ness James Honyman and James Nash who had so as aforesaid underwritten the said policy of insurance on the said vessel and were then and there to wit on the said eighth day of August in the forty-second year aforesaid on the high sea &c. severally and respectively insurers on the said vessel against the form of the statute &c. and against the peace of our said Lord the king &c.

That William Macfarlane late of London aforesaid merchant and George Easterby late of the same place merchant on the said eighth day of August in the forty-second year aforesaid on the high sea &c. were owners of and each of them was an owner of the said vessel called the Adventure and so being such owners and each of them being such owner as aforesaid did then and there with force and arms wilfully and feloniously procure the said William Codling and the said John Reid the felony aforesaid in manner and form aforesaid to do commit and perpetrate they the said William Macfarlane and George Easterby at the time of the said felony so done committed and perpetrated by the said William Codling and John Reid as aforesaid then and there being owners and each of them being an owner of the said vessel with a wicked and dishonest intent and design then and there to prejudice the said Robert Shedden Joseph Marryat Thomas Rider William Ness James Honyman and James Nash who had so as aforesaid underwritten the said policy of insurance on the said vessel and were then and there to wit on the said eighth day of August in the forty-second year aforesaid on the high sea &c. severally and respectively insurers on the said vessel against the form of the statute and against the peace &c.

Second Count—That the said William Codling and the said John Reid afterwards to wit on the said eighth day of August in the forty-second year aforesaid upon the high sea &c. were on board a certain other vessel called the Adventure and that the said William Codling was then and there master of and belonging to the said last-mentioned vessel and the said John Reid was then and there an officer belonging to the said last mentioned vessel and that the said last men-

tioned vessel was then and there insured for a large sum of money to wit the sum of one hundred pounds of lawful money &c. who had before that time to wit on the said first day of July in the year of our Lord one thousand eight hundred and two aforesaid at London aforesaid underwritten a certain policy of insurance on the said last mentioned vessel

That the said William Codling and the said John Reid so respectively being such master and officer belonging to the said last mentioned vessel as aforesaid on the said eighth day of August in the forty-second year aforesaid with force &c. on the high sea &c. wilfully and feloniously did make divers to wit three holes in and through a certain part of the said last mentioned vessel called the larboard run and divers to wit three other holes in and through a certain other part of the said last mentioned vessel called the larboard quarter by means whereof the water of the said sea did then and there enter fill and sink the said last mentioned vessel and that the said William Codling and the said John Reid so respectively being such master and officer belonging to the said last mentioned vessel as aforesaid did then and there wilfully and feloniously destroy the said last mentioned vessel to which they the said William Codling and John Reid did then and there respectively belong as aforesaid with a wicked and dishonest intent and design then and there to prejudice the said Joseph Marryat who had so as aforesaid underwritten the said last mentioned policy of insurance on the said last mentioned vessel and was then and there to wit on the said eighth day of August &c. on the high sea &c. an insurer on the said last mentioned vessel against the form of the statute &c. and against the peace &c.

That the said William Macfarlane and the said George Easterby on the said eighth day of August &c. were owners of and each of them was an owner of the said last mentioned vessel called the Adventure and so being such owners and each of them being such owner as aforesaid did then and there with force &c. wilfully and feloniously procure the said William Codling and the said John Reid the said last mentioned felony in manner and form last aforesaid to do commit and perpetrate they the said William Macfarlane and George Easterby at the time of the said last mentioned felony so done committed and perpetrated by the said William Codling and John Reid as aforesaid then and there being owners and each of them being an owner of the said last mentioned vessel with a wicked and dishonest intent and design then and there to prejudice the said Joseph Marryat who had so as aforesaid underwritten the said last mentioned policy of insurance on the said last mentioned vessel and was then and there to wit on the said 8th day of August &c. on the high sea &c. an insurer on the said last mentioned vessel against

the form of the statute &c. and against the peace &c.

Third Count—That the said William Codling and the said John Reid afterwards to wit on the said eighth day of August &c. upon the high sea, &c. were on board a certain other vessel called the Adventure and that the said William Codling was then and there master of and belonging to the said last mentioned vessel and the said John Reid was then and there an officer belonging to the said last mentioned vessel and that the said last mentioned vessel was then and there insured for divers sums of money amounting in the whole to a large sum to wit the amount of seven hundred pounds of lawful money of Great Britain by Robert Shedden Joseph Marryat Thomas Rider William Ness James Honyman and James Nash who had before that time to wit on the said first day of July &c. severally and respectively underwritten a certain policy of insurance on the said last mentioned vessel

That the said William Codling and the said John Reid so respectively being such master and officer belonging to the said last mentioned vessel as aforesaid on the said eighth day of August &c. with force &c. on the high sea &c. wilfully and feloniously did cast away the said last mentioned vessel to which they the said William Codling and John Reid did then and there respectively belong as aforesaid with a wicked and dishonest intent and design then and there to prejudice the said Robert Shedden Joseph Marryat Thomas Rider William Ness James Honyman and James Nash who had as aforesaid severally and respectively underwritten the said last mentioned policy of insurance on the said last mentioned vessel and were then and there to wit on the said eighth day of August &c. on the high sea &c. severally and respectively insurers on the said last mentioned vessel against the form of the statute &c. and against the peace &c.

That the said William Macfarlane and the said George Easterby on the said eighth day of August &c. were owners of and each of them was an owner of the said last mentioned vessel called the Adventure and so being such owners and each of them being such owner as aforesaid did then and there with force &c. wilfully and feloniously procure the said William Codling and John Reid the felony last aforesaid in manner and form last aforesaid to do commit and perpetrate they the said William Macfarlane and George Easterby at the time of the felony last aforesaid by the said William Codling and John Reid so done committed and perpetrated as last aforesaid then and there being owners and each of them being an owner of the said last mentioned vessel with a wicked and dishonest intent and design then and there to prejudice the said Robert Shedden Joseph Marryat Thomas Rider William Ness James Honyman and James Nash who had so as aforesaid severally

and respectively underwritten the said last mentioned policy of insurance on the said last mentioned vessel and were then and there to wit on the said eighth day of August &c. on the high sea &c. severally and respectively insurers on the said last mentioned vessel against the form of the statute &c. and against the peace &c.

Fourth Count—That the said William Codling and the said John Reid on the said eighth day of August &c. upon the high sea &c. were on board a certain other vessel called the Adventure and that the said William Codling was then and there master of and belonging to the said last mentioned vessel and the said John Reid was then and there an officer belonging to the said last mentioned vessel and that the said last mentioned vessel was then and there insured for a large sum of money to wit the sum of one hundred pounds of lawful money of Great Britain by Joseph Marryat who had before that time to wit on the said first day of July &c. at London aforesaid underwritten a certain policy of insurance on the said last mentioned vessel.

That the said William Codling and the said John Reid so respectively being such master and officer belonging to the said last mentioned vessel as aforesaid on the said eighth day of August &c. with force &c. on the high sea &c. wilfully and feloniously did cast away the said last mentioned vessel to which they the said William Codling and John Reid did then and there respectively belong as aforesaid with a wicked and dishonest intent and design then and there to prejudice the said Joseph Marryat who had so as aforesaid underwritten the said last mentioned policy of insurance on the said last mentioned vessel and was then and there to wit on the said eighth day of August &c. on the high sea &c. an insurer on the said last mentioned vessel against the form of the statute &c. and against the peace &c.

That the said William Macfarlane and the said George Easterby on the said eighth day of August &c. on the high sea &c. were owners of and each of them was an owner of the said last mentioned vessel and so being such owners and each of them so being such owner as aforesaid did then and there with force &c. wilfully and feloniously procure the said William Codling and the said John Reid the said last mentioned felony in manner and form last aforesaid to do commit and perpetrate they the said William Macfarlane and George Easterby at the time of the said last mentioned felony by the said William Codling and the said John Reid so done committed and perpetrated as last aforesaid then and there being owners and each of them being an owner of the said last mentioned vessel with a wicked and dishonest intent and design then and there to prejudice the said Joseph Marryat who had so as aforesaid underwritten the said last mentioned policy of insurance on the said last mentioned vessel and was then and there

to wit on the eighth day of August &c. on the high sea &c. an insurer on the said last-mentioned vessel against the form of the statute &c. and against the peace &c.

Fifth Count—The same as the first with the variation in the name of the vessel which in this count is stated to be called "Adventure" instead of "The Adventure" as in the first count and with another variation stating Reid to have been "a mariner" on board the vessel instead of "an officer" which by the first count he is stated to be

Sixth Count—The same as the second with similar variations

Seventh Count—The same as the third excepting the two variations above

Eighth Count—The same as the fourth with the like variations.

Counsel for the Prosecution.

Mr. Garrow [afterwards a Baron of the Exchequer.]

Mr. Gibbs [afterwards Lord Chief Justice of the Common Pleas.]

Mr. Knowles.

Mr. Marryat.

Solicitors.—Messrs. Crowder & Lavie.

Counsel for the Prisoner, William Codling.

Mr. Fielding.

Mr. Gurney.

Solicitor.—Mr. Chetham.

Counsel for John Reid.

Mr. Serjeant Bailey [afterwards a Judge of the King's Bench.]

Mr. Gurney.

Solicitor.—Mr. Chetham.

Counsel for George Easterby.

The Hon. Thomas Erskine [afterwards Lord Chancellor Erskine.]

Mr. Wetherell.

Mr. Harrison.

Solicitor.—Mr. Lee—Temple.

Counsel for William Macfarlane.

Mr. Serjeant Best [afterwards a Judge of the King's Bench.]

Mr. Knapp.

Solicitor.—Mr. Humphreys.

The Jury.

Thomas Loveland.

George Speer,

Joseph Aldridge,

Joseph Newdick,

Edward Frisby,

John Kirke,

John Garton,

Samuel Conder,

Robert Scothrup,

Rd. Bartholomew,

James Jackson,

Chris. James Hayes.

[The Indictment was opened by Mr. Marryat.]

Mr. Garrow.—May it please your Lordship, Gentlemen of the Jury; The indictment against the four persons at the bar, upon whose fate you are now called upon to deli-

berate, charges the prisoners Codling and Reid, with destroying the vessel in question, which is called the Adventure, with a view to prejudice certain underwriters, who had underwritten a policy upon that ship; and the indictment farther goes on, to charge, that the two other prisoners, Easterby and Macfarlane, being the owners of that ship, procured Codling and Reid to commit the offence which I have already stated: this, gentlemen, it is hardly necessary to state to you is by the wisdom of the law made a capital offence in each of the persons now at your bar: the cause is of the last possible importance; it calls upon you, and upon the Court, for the most deliberate, anxious and painful attention; it does so for the reason which I have already stated to you, that it involves the question of the life and death of the four persons at the bar: it is too of the last importance, as the crime imputed to them affects the vital interests of the country which we inhabit.

A wise and prudent policy, in order to protect and preserve the commerce of the country, which it has extended to a magnitude which is truly astonishing and hardly credible, has induced those who engaged in it, to divide the risks which are inseparable from that commerce, and the navigation by which it must necessarily be carried on, amongst the many, upon whom, when they fall, the pressure is but lightly felt, instead of leaving all its disadvantages and perils to crush the private adventuring individual, who would be too often ruined if the whole loss were to be borne by himself: we have therefore the good fortune to see that which exists, and can exist only in this country, that a body of respectable individuals, comparatively few in number, in the heart of this metropolis, take upon themselves these risks, not only as they affect the commerce of this country, but also insure the commerce and navigation of the world, affording to the ship-owner and merchant, at the price of a small deduction from their profits, a complete indemnity against all the calamities and losses to which they would otherwise be exposed. If crimes like this now imputed to the prisoners, can be perpetrated with impunity, it is not too much to say, that, this system so wise and beneficial, must from this day cease; and I am afraid the commerce of the country, and all its best and dearest interests, intimately connected with that commerce, could not long survive.

Gentlemen, I have taken the liberty of saying thus much to you, not (God knows) with a view to excite any prejudices against the prisoners at the bar, but with a very different intention; the case is of importance, and I therefore desire your attention, but I at the same time desire of you, that if you have heard any thing of this cause, before you came here—if you have had the misfortune, a misfortune which I take every opportunity of deploring, and shall continue to do so, until it

shall be removed—if you shall have had the misfortune which attends almost every case—which has any thing of curiosity about it, or which has excited any thing of expectation:—if, I say, you shall have had the misfortune to have heard, or to have read any thing upon the subject of this cause, I most anxiously entreat you, to discard it all from your memories, and to bring your minds pure, and without bias or prepossession, to the investigation of the evidence alone: I ask of you too, that if in the course of stating this case, I shall be accidentally betrayed into any observation that shall not be found warranted by the evidence, you will distinguish between my statement and the proof, and decide not upon any thing that I may state but by the evidence alone. If you had the good fortune to be present in this place yesterday, as I had, when the grand jury received their charge, I would intreat permission to refer you to that which was then most ably, most eloquently, and most humanely stated as the guide for their conduct, and request that you will adopt it as the rule by which you ought to govern yourselves on this most momentous occasion.

As my object in the discharge of my present duty, is only to endeavour to render this case intelligible, I mean to avoid as much as possible, all minute detailed discussion; and shall not take up any of your time, as to the law of the case; for whatever belongs to that, will be decided by the learned judges, either here or upon farther consideration, if there shall be any thing that shall be thought to require more laboured investigation. I shall assume for the present, that the law is as I confidently state it to be, that if the facts, as I shall state them, shall be proved against the prisoners, they will clearly and irresistibly make out a case within the law as it stands upon our statutes.

In the course of stating this case, there will be some of the facts which you will observe, apply to impute guilt to *all* the prisoners at the bar; but the course which I shall prescribe to myself, will be, to give you a short narrative of the progress of the ship itself; then to state the facts by which we impute to the prisoners, Codling, and Reid, the destruction of this vessel, because you must first be satisfied of the fact, that they were guilty of the destruction of the vessel, before you can by any possibility impute to the other two prisoners, that they procured that fact to be done. I shall afterwards proceed to state the several facts, which apply more directly to the two other prisoners, Easterby and Macfarlane, and perhaps conclude with some general observations upon the case which I shall so narrate.

Gentlemen, you will find that the ship Adventure was purchased at a public sale, I think about the month of May or June last. It should seem from some of the evidence, that a speculation of the sort, which this day's inquiry brings before you, had been in the

contemplation of Messrs. Easterby and Macfarlane, for some time previous to the purchase of the vessel; because a part of the cargo subsequently shipped on board, certainly had been procured, previous to that time; the vessel was fitted out, and sailed from the Thames some time about the middle of July, in this year.—Policies of insurance (upon which I shall have occasion to say more to you upon the subsequent parts of the case) were effected by the direction of Messrs. Easterby and Macfarlane; and the first-named prisoner having been appointed to the command of this vessel, she sailed from London to Yarmouth, certainly not having taken in at London any thing like the cargo which these gentlemen had represented to be the object of their adventure.—At Yarmouth they took in goods to no very considerable amount, and a quantity of ballast, amounting to some ten or fifteen tons.

The ship had sailed to Yarmouth with Mr. Codling, as commander, and with a person of the name of Storrow as supercargo.—It will appear, that Storrow never had intended to proceed on the voyage as supercargo; that his object (an object however which he concealed from the prisoners), was, to get an old account settled between him and Mr. Easterby, and with a view to accomplish that, he had undertaken, and seemed to engage in the business of becoming supercargo on the voyage in question—he will in the course of to-day's inquiry turn out to be a most important witness: he left, or rather proposed to leave the vessel at Yarmouth, but was induced to go on to the Downs, where the prisoner Reid, succeeded him in the office of supercargo.

Whilst the Adventure was in the Downs, a person who had been engaged as the mate of the vessel, stated that he was much affected with the rheumatism, or some other complaint, and could not proceed upon the voyage, and that he must quit her; in consequence of which, a circumstance, which will appear to you to be extremely important in this case, took place, namely, that instead of procuring a person competent to supply his place, and to discharge the important duties of that station,—which officer, as you well know, is the next in command, authority, and importance, to the captain of the vessel; instead of procuring such a man from any place from whence he could be procured, you will find that the prisoner Codling, took a man of the name of Cooper, from before the mast, and made him the mate of the vessel. The bare fact itself appears to me to be of importance, but the circumstances that attended, it render it considerably more so, because, you will find that Cooper, conscious of his own incapacity for such an office, ignorant as he was of navigation, without knowledge or experience, not having been engaged before in any such situation as that of mate, endeavoured to excuse himself from the office, which was now desired to be put upon him, and stated

himself to be utterly incapable of performing its duties. You will find that the prisoner, Codling, of whom I feel that it is impossible that any person can impute to me, knowing, as I do, the facts which I have behind, that I am uncharitable in stating what I now state; the prisoner, Codling, with a perfect consciousness that a knowledge of navigation could be of no use—that his skill, as mate, if he had possessed any, would have been all thrown away,—that the object of the voyage was not to be extended to Gibraltar, Leghorn, or any of those ports, to which, by the representation made above board, she was destined,—but that she was to find her destruction before she quitted the British coast,—told Cooper, that if he discharged his duty to his satisfaction, that would be sufficient; it would not be a very arduous one, and he was accordingly appointed the mate.

Gentlemen, you will find, that soon after this, Codling made no hesitation in stating, (he made no secret to the mate at least of) that which it was the purpose of him and of his owners to accomplish. The vessel lay in the Downs, and if she had been destined to any of the ports to which, by the policy of insurance, she was represented to be intended to sail, there were opportunities at which she might have sailed, in company with other vessels outward bound; but one day the wind did not please the captain, another day he waited for letters from his owners, and her departure was postponed from time to time, till at last she sailed from the Downs alone. In the course of their passage from the Downs, in the very short time which she survived after that period,—for she was cast away, she was destroyed off the town of Brighton,—you will find that the prisoner, Codling, spoke of her as a ship utterly unfit to cross the Bay of Biscay; that it was absurd to suppose that any such voyage should be contemplated, that she should not attempt it, but should very soon be destroyed, that they should not remain in her forty-eight hours.

When the vessel arrived off Brighton, you will find that the prisoner, Codling, took the opportunity of going upon deck, and of stating to Cooper, his newly-appointed mate, the person whom I have been describing, that he himself was a clumsy fellow (you will observe, if you attended to the persons of the prisoners as they answered to the officer upon his reading the indictment, that Codling is a lusty person), he stated that he was a clumsy fellow, and could not get into the locker of the cabin, for the purpose of boring the necessary holes in the ship's bottom, in order to destroy her; he, therefore, ordered the mate to go and accomplish that purpose, telling him, as the fact certainly was, that he would find the instrument ready to his hand, for that the auger was then upon the floor of the cabin: and, in order to make sure that this should not create an alarm to the persons who constituted the rest of the crew, by which the guilty purpose

might have been defeated, and to prevent their having the means of giving evidence, if the business should succeed, as it afterwards did succeed, and those persons should survive; he took care, having himself supplied Cooper's place, at the helm, to employ the rest of the crew in handling the sails, in situations the most remote from that where this business was to be transacted, and to engage them in an employment, which, of itself made some noise, so as to prevent their hearing what was going forward below.

Cooper followed the captain's directions; he went down into the cabin, and bored three several holes in the bottom of the vessel, with augers of different sizes; when he came again upon deck, the captain inquired of him if he had done what he was desired, and if the water was coming in; the answer the mate gave was, that the water was not rushing in in great quantities, for he had left the augers in the holes which he had bored: this was in the night; the captain said that was very well, he would leave it so till morning, when things could be better arranged; and, upon some observation being made by one of the crew that he heard water rushing in and thought there was a leak, the captain said, it was only the rippling of the water against the run of the vessel, and no such thing as a leak.

It is fit I should here state what belongs to the case of the other prisoner Reid; he was, as I have stated, the supercargo of the vessel, and, I apprehend, that you will have no doubt or hesitation in concluding, from the circumstances which I shall have to state and prove, that he was the supercargo, not of a voyage to Gibraltar, or to Leghorn, but the supercargo of a destruction of the vessel for the purpose of defrauding the underwriters upon the vessel; I do not impute to him that he lent an active hand in the destruction of the vessel, the facts do not justify that imputation, but he was in the cabin where that destruction was accomplished; he was lying upon a bed close to that locker which had been broken for the express purpose of boring the holes in the bottom of the vessel, and he remained a witness of the destruction that was going forward, without making any effort to prevent it.

Things remained in this state until daylight approached, when it was found necessary to do something more, in order to bring about the purpose that was to be accomplished; for the holes, which had then been bored in the bottom of the vessel, did not let in water enough to effect her destruction, and therefore the captain ordered the same man (Cooper) to go down and enlarge the holes; and you will find,—for we shall produce to you, the plank that has been taken out, which will bear its own testimony with it,—that he went down, and with a crow bar made an aperture sufficiently large to have destroyed a vessel of this size, if a dozen pumps had been

brought to work upon the water which flowed into it; the consequence of this was, that the boat was hoisted out, and the persons constituting the crew, accompanied by the master, got into the boat, and, as the seaman's phrase is, lay by the vessel so scuttled, and then in a sinking state; respecting that boat, there is a circumstance extremely material to be stated; you will find, that it was part of the directions given by the captain, previous to their arriving off Brighton, that there should be nothing put into the boat but the four oars, and that there should be thouls enough; these are wooden pins, which are put into the parts of the boat, against which, in rowing, the oar is to get its purchase; the direction was, that they should not do that which, in ordinary voyages, is commonly done, to place any thing out of the way, into the boat, which occupies a considerable space upon deck, but that there should be nothing in the boat except that which would be extremely essential for the purpose of escape, when the vessel should be itself sent down to the bottom,—that there should only be the four oars, and, to guard against accident, plenty of thouls: these thouls were prepared and put into the boat: the boat was kept perfectly ready; and, in the manner I have stated, at this period these persons got into it.

It may be asked of me here; perhaps the inquiry is passing in some of your minds—how do you prove all this? because it is not usual for persons who are engaged in the commission of crimes, especially of such as affect their lives, to call upon witnesses to view what they are doing, in order to give an account of it afterwards for their condemnation? Certainly not; and many guilty persons would every day escape, if the wisdom of the law and the exigencies of justice had not provided other means for ascertaining their guilt, than by calling witnesses who were themselves present at the perpetration of the crime imputed. The witness whom I shall call to prove all these facts, is Cooper the mate, whom I have had occasion to name more than once; I present him to you as an accomplice, it is the only word which I know of that describes him in the language of our law, but it describes him under the fact; he is an *accomplice*, nay, he is a *perpetrator* of the fact which I have been stating; I do justice to the defendants in so describing him, and I go on to state, that if the fact depends upon Cooper's evidence alone, *unconfirmed* by other circumstance, as he is an accomplice, and was the perpetrator of the fact, it would be too much to involve any man in the hazard of their lives, upon the testimony of such a witness; but the wisdom of the law, and all experience has taught us, that if this accomplice be *importantly confirmed* in the story which he tells, then you will receive that story, and you will act upon it as if you had received the facts disclosed in it from witnesses of undoubted cre-

dit; and then you are to ask yourselves upon the whole, am I bound, in my conscience, to believe the facts which the witness has stated; for if you should feel yourselves bound to believe and act upon his representation, there is, against Codling and Reid, a body of evidence, which I apprehend is irresistible.

Gentlemen, I have now stated to you the facts, as they apply to the principals in the transaction, Codling and Reid, without commenting upon them, and without having, at present stated to you the various facts in their confirmation; we shall now examine, whether I put the witness, Cooper, before you, in the condition in which I have described an accomplice must be, before you attend to his evidence, so as to convict upon it; is he confirmed?

Gentlemen, I shall not pick up, from different quarters, some little circumstances of confirmation; but I shall build the witness up in confirmation, I shall surround him with a tower of confirmation that is impregnable,—with circumstances which could result from nothing but the guilt of the persons now accused—the facts of the conduct of the several parties in the transaction: I shall confirm him not only by the conduct of Codling, but by such facts in the conduct of all the other prisoners, as are totally irreconcilable but by a conviction of their guilt. I here dismiss Reid, I have stated all that belongs to his case, excepting as far as Cooper is confirmed by those facts which apply more directly to the case of the other prisoners.

I had proceeded, in the narrative, to that period in which the crew left the vessel and betook themselves to the boat; but recently before that, a little awkwardly in the manner, of doing it (but upon which I do not lay any great stress) a signal was hoisted denoting that the ship was in distress, I do not press that, we will take it that it was a fair signal of distress; it certainly had the effect of bringing some of those boats that are always upon the look out ready to relieve those who are in distress; some of the boats at Brighton made their appearance too soon for the purpose of Codling, because, if they had been permitted, things remaining as they did at the time at which Codling quitted the vessel, and at the time when the Brighthelmstone boats approached near her, to have gone on board, I have no doubt that the intrepidity and skill of those persons would have done the thing least to be desired, most to be dreaded, by the parties concerned in this transaction, they would have brought the vessel on shore, when she would have given that damning proof against them, which to-day she will exhibit by her wounded sides.

You will find that after they had quitted the vessel, Codling and the mate returned again on board, secured the helm, and trimmed some of the sails, with a view of bringing her head to the shore, as if they intended to bring her into the land: it was a silly expedi-

ent, and could not last for a moment, for she, at this time, was perfectly water-logged, with a body of water within her, surrounded by a body of water without, so that she could not answer the helm, for the purpose of being impelled towards the shore by that operation; but you will find, that when the Brighton boats came off—came off, to what? to a vessel in distress, which had hoisted a signal for assistance, which called upon the humanity of those persons, as well as upon their interest, to do every thing for the safety of the vessel; you will find,—and this you will have not upon the testimony of Cooper alone, but upon the testimony of persons out of the reach of the possibility of suspicion,—that Codling held this extraordinary conduct; that he ordered the boats to keep off; said she was his vessel; that he was the master of her; that he had not done with her yet; and that they must not touch her until he had left her, using other expressions that he would stay by her till the last; he had before said, whilst the pumps were employed in the vain attempt to relieve her, damn it, it signifies nothing to take pains to save her, to the bottom she must go. I take leave to pause here for a single moment, and to ask you whether, if this fact is made out to your satisfaction, it is possible for you not to consider this as a confirmation of the testimony given by Cooper, beyond all reasonable expectation of confirmation; is it possible, that any man, meaning to act fairly, and to protect his own property in the vessel (for he must be taken to have had some) when he is within the reach of assistance which has come to him upon his own call, should immediately and perseveringly interdict all assistance, and tell the persons it is his vessel, he had not yet done with it, and they must not interfere with it till he had? is this reconcilable with any thing but the case of guilt?

Soon after, the Swallow cutter, in the employment of the revenue, came up, the people of the Swallow acted, not like those other salvors, the fishermen of Brighthelmstone, who only act upon the call of those who are desirous to invite their assistance, the crew of the cutter acted with a degree of authority, they went on board the vessel, hoisted their own colours at the mast head of her, and endeavoured to draw her into shore: the Adventure which had been thrown on her broadside, righted a little, and then went to the bottom.

Gentlemen, I said I would not trouble you upon the law of the case: I shall now take up but a moment of your time upon it; I have heard of speculations that would, indeed, make an end of this case: if they have any foundation, the sooner it is over the better; I have heard of various speculations which have got into people's heads about this—that I have already stated myself out of court—that this vessel, forsooth, was not destroyed. Oh no, certainly not; her timbers continued together; her mast was in its place; the

bowsprit was not unshipped; the various parts of which she was composed still continued to be in existence; and, if the law be, that unless you annihilate the substance altogether, so that there are none of the atoms remaining, which constituted the brig Adventure, you are perfectly free from all blame, and from any imputation of legal guilt; if that is the law, to be sure there is an end of this case, because the ship was not utterly destroyed; and if such is the law, the sooner we are told so the better! I will not waste another word upon this idle statement, because it would be an insult to your understandings, and disrespectful to the learned judges upon the bench: I should deserve their chastisement for so silly a waste of their time, and should have no ground upon which I could expect an indulgent attention to what remains.

After the vessel had thus, as I have stated, met with its fate; after it had thus, as we upon the record have said, and I take leave to assume, are entitled to say; after she had been thus cast away, as the language of one set of counts is; or in the language of the other, had been thus destroyed, the crew repaired to Brighthelmstone; and I shall still pursue the course I proposed to myself, of confining the narrative, for the present, to the conduct of Codling, being again, under the necessity of returning to the same facts, to apply them, by and by, to the conduct of Easterby and Macfarlane.—You will find, that the ship's company arrived at an inn, or hotel, at Brighthelmstone, called the Old Ship, where they were all together; and very soon after the loss of the vessel, as might naturally be expected, the news of that disaster was carried to London, not without shrewd suspicions on the part of those who had witnessed the scene at Brighthelmstone, and on the part of those that had visited the ship, that there had been some foul play.—A gentleman of the name of Douglas, a discreet person, and of experience in matters of navigation, was despatched to Brighthelmstone, to enquire into the affair.—When he arrived there, he found Easterby and Macfarlane had arrived before him—Codling, Reid, Cooper, and the rest of the crew, still remained there.—And you will find that upon an application made by Mr. Easterby to Mr. Douglas, to know if he had any commands for captain Codling, he was told, that as the people in the neighbourhood were at that time bringing the vessel in to shore (for she was afterwards brought completely on shore, unladen and examined), that as they were then bringing her in to shore, and there would be an opportunity of inquiring into the circumstances, which presented pregnant suspicion, he must on no account leave Brighthelmstone.—Upon which you will find, Easterby undertook that captain Codling should not leave Brighthelmstone. I shall come to that however, by and by, when I come to speak more particularly of Easterby's share in this transaction.

I beg to, ask if this was a fair transaction—if this was a loss occasioned by accident, or, as my friends may be disposed to put it, if this were a wilful destruction of the vessel, by Cooper, and not by Codling? Is the conduct which I have already stated to you, observed by the prisoner Codling, reconcilable with that state of the case? May I ask what would have been his conduct after he had landed at Brighthelmstone, if he had been unconscious of guilt? I will suppose that Cooper's story of Codling having ordered him to destroy the vessel, is all fabrication; that Cooper did it without the knowledge of Codling; which I shall show, by and by, is impossible; I presume the duty of the captain to have been, to have remained by his vessel as long as he could be of any possible use; to have gone off, in the first boat that went along side her; to be anxious to assist in bringing her in to shore: such I presume would have been his natural conduct: I should apprehend, that he would have remained upon the spot, without any body inviting him to do so. Now we shall see whether Mr. Codling did so.

You will find that Reid, the supercargo of the vessel, in violation of the promise that Codling should remain there, took a place for him in the London coach. I do not know whether Easterby was present at the taking it: I know he was there when he took leave; but, upon my recollection of the evidence, Reid took a place for captain Codling in the stage coach for London, in violation of the undertaking that he should remain at Brighton. Did he take it in the name of Codling fairly and above board?—No; but in the feigned name of Postato. And this captain, with all this guilt about him, and surrounded by suspicious circumstances, leaves Brighthelmstone; Easterby and Reid taking leave of him at the coach-office; and he arrives in London by the false name of Postato.—Well, but it might be material to him to be in London; and as this thing had made a noise, it might be as well not to travel in his own name—let us examine what he does next; the next thing he does is, immediately upon his arrival in London, to write to Easterby, then remaining at Brighthelmstone, to inform him that he had arrived in London; that, in pursuance of his orders, he was about immediately to go to Colchester, which he represents as at the distance of twenty miles from Harwich, in hopes to be able to arrive at Harwich in time for the packet, or a by boat, or a collier, pursuant to his (Easterby's) orders, to get out of the kingdom as fast as he could: precipitately leaving this scene, when he was so imperatively called upon to remain upon the spot, to give all the information and assistance in his power. He states, the instant he arrives, in a false name, that he shall leave London, and as soon as possible proceed to Hamburg, and from thence he would inform him (Easterby) certainly of his farther proceedings, Very fortunately for the purposes

of justice, the activity of a gentleman, whose active attention is never wanting to the interest of his employers, Mr. Lavie (the solicitor for the prosecution), who had by this time arrived at Brighthelmstone, intercepted this letter, which furnished a clue to every part of the transaction, and therefore Mr. Douglas was despatched instantly from Brighthelmstone to London, in order to trace the steps of Codling, and to apprehend him if he could. It is unnecessary to inquire what he learned in London; we will, therefore, if you please, proceed with him to Harwich, where he found a post-office packet just getting out to sea; upon looking at the list of passengers, there was no Mr. Codling on board; but having found that he had travelled to London by the assumed name of Postato, Mr. Douglas's inquiries were not to be baffled by not finding the name of Codling in the list of passengers; and therefore, with a considerable degree of address, he procured a boat with a post-office jack, a signal that would be noticed by the packet, and he pursued the packet. Upon a muster of the passengers, no Codling was to be found; there was not in the list of passengers a Mr. Codling, nor a Mr. Postato; but there was a Mr. Postgate; and upon going below, Mr. Postgate turned out to be Mr. Codling, concealed in a bed in the cabin. He was brought out, was committed, and is here to answer for his guilt.

Gentlemen, I believe I have now stated to you most of the material and prominent parts of the case, as they respect the guilt of Codling, except in so far as there will be facts in respect to the guilt of others, which could not by any possibility have been accomplished without his sharing in them. It appeared to me to be convenient and necessary, first, to possess you of the facts respecting him; and here permit me to pause for a single moment, to ask you if these facts are made out; and if, in addition to them, it shall be proved by the rest of the crew, that the captain anxiously and studiously prevented their having any opportunity of going below, even in discharge of their daily and hourly ordinary duty, while this fact of destroying the vessel was perpetrating by Cooper, under his orders; may I take the liberty of asking whether it is possible, even for all the charity which I know you bring to the discharge of your important duty, to hesitate one single moment upon the guilt of his conduct? I hope I am not deviating from the practice which I flatter myself I have pursued during the whole course of my professional life, of not pressing things against a prisoner beyond what they will fairly bear, but stating them in the spirit in which you and I, in our respective stations, must discharge our duty, with the firmness of men who feel the importance of the task imposed upon us.

We shall now proceed to the facts which are to connect the prisoners, Easterby and Macfarlane, in this guilt of Codling. Easter-

by and Macfarlane were the owners of the ship; and the offence with which they are charged consists in the fact of having procured Codling to commit the offence of destroying this vessel, with a view on their part to prejudice the underwriters upon that ship; but though the offence is by law restricted to the prejudicing the underwriters upon *the ship*, the facts respecting the cargo will be extremely material, as the evidence of the guilty intention of the parties; and it seems to me that they furnish a most satisfactory proof of it.

You will find, gentlemen, that the cargo was not that of a general ship; the *Adventure* was not a ship put up to take in your goods and mine, and the goods of the whole public, but she was, in every sense of the word, the *Adventure*; she was the private adventure of Messrs. Easterby and Macfarlane, and you will find that their object was, to procure such an assortment of goods as might enable them to make large insurances upon those goods, so that upon the destruction of them they might call upon the underwriters to a large amount; and you will find, to speak in round numbers, that the insurances effected upon the vessel amounted to about nine thousand pounds, it may be a little more or a little less, but I wish to keep a little under; and that farther insurances endeavoured to be effected by their joint orders would have amounted to about thirteen thousand pounds in the whole.

In order to satisfy the underwriters, in the case of an accidental loss of a vessel, that the assured have an interest, up to the extent of their insurance, it is always expected, that the party claiming the loss, should produce the invoices of the goods: and in the case of persons of character, I believe, that ninety-nine times in a hundred, the liberality and good faith which constantly obtain at Lloyd's coffee-house, proceed to an adjustment upon the bare production of the invoices of the goods; but if the case affords grounds for suspicion, then the underwriters expect something more; they expect the bills of lading; why do they call for the bills of lading? Because those are the documents which the practice of trade, and the experience of commercial men have established as the evidence of the shipment of goods. By these documents the captain, or the person standing in his place, certifies the fact of the receipt on board; and upon the production of these, the adjustment is always made.

Now we shall see how Easterby and Macfarlane conducted themselves with respect to this cargo. You will find, that, not contented, with the genuine invoices of the goods actually shipped on board, made in the usual manner, they procured from persons, some of whom I shall be obliged to call to-day, fabricated invoices, charging the goods at a much larger price than that which they were to pay; in some instances twenty, in others thirty per

cent, and I believe even higher: but I am content to state it at a low sum, at twenty or thirty per cent. beyond the actual charge in the genuine invoice, and which they were to pay to the tradesmen. Now, can it enter into the imagination of any man who is about to send out a vessel upon a foreign adventure, expecting that, but for the perils of the navigation, she would arrive at the place of her destination; and, that his remuneration and profit would arise from the sale of the cargo in a foreign market;—or contemplating, if you please, a possible loss, for which he was to call upon the underwriters; can it enter into the head of a man so circumstanced, to procure a false invoice but for the purpose of imposition; an imposition which is to have its effect by the false invoice being produced to the underwriters as the proof of the amount of the loss actually sustained. I may be told this is sometimes done, even where no fraud is meditated; if it be so, I desire that no particular stress may be laid upon that circumstance: indeed, there are so many other facts in the case, and of so conclusive a nature, that it is unnecessary to rely upon this.

I mentioned, when stating the facts of the case as against Codling, that there would be some circumstances in the narrative respecting the guilt of the other prisoners, which necessarily included Codling in that guilt; I speak now of the bills of lading signed by him, and intended to be produced to the underwriters. It is a part of the facts of this case, that bills of lading were procured from Mr. Codling, by which he certified the receipt on board, of goods which he knew never were put on board, nor were ever intended to be put on board. He signed his bills of lading; he passed his cockets at the Custom-house; he procured the manifest of his ship to be made, consisting of articles, some of which were on board, some of which never had been on board, some of which, to a considerable value, had been indeed on board, because they had been shipped by the traders who had furnished them, but which had afterwards been taken out of the vessel by Easterby, the prisoner at the bar. I desire to know then; first, as applying these facts to Codling, how could it have happened that he should have signed bills of lading for goods not actually on board? How could it have happened that after they were on board, and were in his manifest, he should have permitted them to have been withdrawn from that vessel, of which the manifest purported to be an inventory, unless he was fully, accurately and intimately acquainted with the purpose of his owners?

Some of the articles in his manifest certainly were on board, for it was necessary to carry the appearance of having a cargo, and it was necessary too to have a cargo up to a certain extent, for the reason which I will by-and-by state.

Gentlemen, I mentioned to you some time

ago the name of a Mr. Storrow, who proceeded as a super-cargo, at first to Yarmouth, and afterwards having abandoned the voyage, proceeded in her to the Downs; and I told you he would be a very important witness. I will for the present, if you please, as respecting the case of Easterby and Macfarlane, dismiss from your consideration all that I have said to you of the testimony of the witness Cooper. I will suppose, that considering the case as having been proved against Codling, that with respect to Easterby and Macfarlane, you forget, for the present, that such a person as Cooper exists; and then I will present the facts as they apply to these two defendants, independently of his evidence, and ask you, without calling in aid any thing that Cooper states, can you have the least hesitation upon this proposition, that they sent out the vessel, that they procured the insurances with an intention, and under orders to Codling, not to proceed to the pretended ostensible ultimate destination of the vessel, but to destroy her in the course of the navigation? that he did so, is a fact of which you likewise must be satisfied, in order to include them in your verdict of guilty.

You will find, that Mr. Storrow had been much connected with Easterby, that he had sailed in his employ in other vessels, and two of the crew engaged on this voyage were apprentices, in fact, at the time to Storrow, and that he, Storrow, was applied to by Easterby, to go as the supercargo in this vessel upon the voyage which forms the subject of this day's inquiry. Against Mr. Storrow, the facts of the case do not afford ground for the least imputation, for he had left the vessel before she sailed from the Downs: he is a witness who (unless my friends can break in upon him either by cross-examination, or by showing that he is a man of infamous character) will most clearly and satisfactorily prove the whole body of guilt against Easterby and Macfarlane; it will too most materially affect the other prisoners, Codling and Reid. It might be asked why, under these circumstances, should these men, the owners, risk any part of their own property; why sink goods to the value of three thousand pounds; why not carry lumber and call it valuable merchandize? I answer for two reasons; first, because the whole of the crew could not be trusted with so dangerous and important a secret as an intention to destroy the vessel, and to them there must be the appearance of a cargo: but most importantly for this reason, which I shall fix upon both; Easterby and Macfarlane by the testimony of Storrow, that they had proposed, that he, as supercargo, should go with this vessel to Gibraltar; that there he should sell the greatest part of the cargo, and that he should send home two sets of advices of the sales that should have taken place there; one of small quantities at low prices, as if they had come to a bad market, to be shown to the underwriters; the other,

containing the actual prices to be shown to his guilty owners; and that then having left a part at Gibraltar, having so made his market, the vessel should be sunk, and the underwriters should be called upon for a partial loss to a considerable amount beyond the truth. If I show you this, and show the vessel to have been so destroyed, as I have stated, off Brighton;—if I show, that before they sailed from the river Thames, the prisoner Easterby and Macfarlane had communicated to this Mr. Storrow, whom they desired to be a partaker in the guilt of this design, that before she sailed from London they meditated her destruction, can you hesitate respecting their guilt?

But, gentlemen, long as I have occupied your time, there are many material circumstances which I have not yet stated; and which go to prove the guilt of these defendants. Storrow did not go in this vessel, but left it in the manner I stated, and the prisoner Reid, was put in his place.

You will attend to the circumstances which occurred after Mr. Douglas had arrived at Brighthelmstone, and when it became actually the town's talk that this vessel had been purposely cast a way; for, to say the truth, it was very clumsily done. Here permit me to observe, as I have had frequent occasion to do, in the course of my journey through life, that there always is with knavery mixed up such a due proportion of folly, that it generally tends to the elucidation of the guilt of those concerned in acts of atrocity, and providentially tends to the security of society by conducting ultimately to their punishment. So here, in a calm day off Brighthelmstone, the worst place in the world for a deed of complicated fraud, this thing is transacted.

You will find after the owners had arrived at Brighthelmstone, when they were, as they supposed, in close conclave with those alone to whom a full and unreserved confidence could produce, as they imagined, no mischief; that is to say, Easterby and Macfarlane, in company with Cooper and Reid, how Easterby expressed himself: and, first, may I ask in what manner an honest owner would have comported himself at Brighthelmstone at such a time, and in such apparent circumstances? The answer is obvious: if he chose to abandon the vessel and the cargo, and to give her up to the underwriters, he would naturally be anxious for his fair fame; he would be desirous to stand well upon the Royal Exchange of London, that he might have it in his power to effect future insurances upon his future commercial enterprises, and not be branded, as having been connected in the guilt for such a crime as this; he would, therefore, labour incessantly for the purpose of bringing the vessel to shore, and the guilty to punishment.

You will find how these gentlemen comported themselves; you will find one of these owners, now at the bar, in the presence of

the other, expressing himself to Codling in some such way as this: "Why, Codling, you have made a damned stupid job of this; why did you sink her here? Why did not you carry her to the coast of France, and then in the boat you might have made either land?" A very judicious observation, and marked pretty strongly with a consciousness of guilt. The vessel certainly having received so effectual a death's wound, as you will find this *Adventure* had received before the crew left her, never could, if they had left her in a sinking state on the coast of France, have found her way to the English coast for examination; the circumstances would never have been investigated on the coast of France, and all these persons would have rested in entire indemnity; and therefore I agree, that a more clumsy thing could not have been described, and that the observation made by Easterby and Macfarlane was perfectly well founded.

Gentlemen, you will find, that Macfarlane, not with an anxiety to bring the guilty to justice, but with a curious anxiety to know how likely it was that the guilty might be reached by proof, and in language which demonstrates his own guilty knowledge, inquired of Cooper, in the presence of Codling, Reid, and Easterby, of what size the hole was which he had bored in the bottom of the vessel; and in order to ascertain the size, he asked whether it was about that of the handle of a carpenter's chisel that was lying upon the floor in the room of the inn, where they then were. Cooper said, he thought the auger-holes were pretty much about that size. "Well, then" (says Easterby), "as the people are employed at present in endeavouring to weigh the vessel and bring her in, when she comes in, these holes will be apparent; sharpen off the point of the handle of the chisel, in order that if she should come upon dry land upon the beach, you may be prepared to fill up that hole." This will be stated, however, by Cooper alone; but you will recollect, if I am entitled to use the expression which I have used, and which I do not change for any other softer or lower, that I build Cooper up, and fortify him by confirmation: if I do so, he is entitled to credit in this part of his story, as he is in all the rest; nor is the circumstance itself one which it would probably occur to him to invent.

The parties remained at Brightbelmstone; and lest it should be for a moment doubted, whether destruction was the port to which this vessel was destined, whether Lloyd's coffee-house was to be the market for the cargo and the ship, and the underwriters were to become the purchasers at the price of a total loss upon the pretended value, as soon as pen and ink could be procured, an abandonment of the ship and cargo was made by Easterby and Macfarlane; by this joint act of theirs, intimating to all the underwriters, what the fact indeed had intimated before, that they, the owners, abandoned the vessel, left her al-

together to the underwriters, and that the underwriters were to pay the amount of their several insurances. Macfarlane, soon after the arrival of these several persons, and these transactions at Brightbelmstone, left that place in company with Cooper, Reid, and others of the crew.

You, I am sure, very well know,—and it is a great satisfaction to me to feel, that I am addressing myself to gentlemen so well acquainted with business as those whom I have the honour of addressing,—you know, that in consequence of this misfortune, if it were one, neither Cooper, nor any of the rest of the crew, were entitled to their wages; the amount is indeed but a trifle, and I do not press the circumstance; but it is a fact fit to be stated, that Easterby and Macfarlane, when at Brightbelmstone, paid the crew their wages, and gave Cooper a guinea, or a pound, in order to pay his expenses to London, accompanying it with this most important observation from Easterby: "that he, Cooper, must go to London, and keep close; for that if he did not do so, he would be under sentence of death." You observe, that the captain (Codling) was already disposed of; he was to go to the continent. Cooper, the person intimately acquainted with the guilt of all the parties, and who had been made the hand to perpetrate the fact, was to go to London, and to keep close; and the inducement stated to him to keep close was, that he would be under sentence of death, if found at large; and then the owners of this vessel, whether her destruction happened by accident, or should be proved to have been in consequence of the guilt of Mr. Codling, as that would be an act of barratry, would be safe in their speculation in receiving the value of the ship and cargo, and three times the value, from the underwriters.

Mr. Macfarlane then came to London; and you will find that of the cargo, of which invoices were to be produced to the underwriters, and which had been prepared for that purpose, of which cockets were regularly entered at the Custom-house, of which bills of lading were regularly passed and signed by the captain, of which a manifest in due form was prepared,—that of these goods a considerable proportion, in point of number of articles, and of the value, were not on board the vessel, but in the private dwelling-house of Macfarlane. It were to be wished, for his sake, that there they had remained, because, though it would have been a very pregnant circumstance of guilt against him, that articles, for instance an organ, a thing that must have attracted notice, a piano-forte, and other articles which I will not waste time in enumerating, which will be mentioned in the course of the evidence,—that these things should be found not in the only place in which, consistently with innocence, they should have been, namely, in the hold of the *Adventure*, it would have required all the ta-

kents which are to-day combined for the prisoners' defence, to have accounted for these things being found in the dwelling-house of Macfarlane. But here, too, farther to evidence that which is already but too clearly proved, you will find Macfarlane giving conclusive evidence of his own consciousness of guilt, by causing those articles to be removed out of his own dwelling-house to the house of a lady but too intimately connected with him, and at that time domiciled with him; sending them to the lodgings of her sister, stating that it would appear very odd, and be very dangerous, if these things should be found in his house. How would it appear very odd, and very dangerous, if he were innocent? If he could show that these things had been overlooked in the hurry of loading the vessel; if it could be proved that the vessel was already so full that she could carry no more (though she took in ten or fifteen tons of ballast after she left the river), there would be nothing dangerous, nothing awkward in the fact. But, if the goods which ought to have been on board at Brighthelmstone, were surreptitiously kept back from the cargo, and were never intended to make a part of it in any other shape but in fraudulent bills of lading, for the purpose of calling upon the underwriters afterwards for payment, it is, I agree with Mr. Macfarlane, an extremely awkward circumstance, and pregnant with danger, that these things should be found either in his own possession, or in the possession of any one connected with him. Facts of a similar nature apply to Easterby, as will be seen presently.

Macfarlane left Brighthelmstone before Easterby: Easterby and Reid were there taken into custody, and an examination took place before a magistrate of the county; and so it happened, I do not know how or why, that magistrate thought fit to discharge them: I give them the benefit of that discharge: Easterby came to London, and, upon intercepting a letter, which I have stated to have been written by Codling to him, which disclosed, not only Codling's guilt, but furnished a clue to the whole scheme of this fraud, from beginning to end, and how it was intended to endeavour to escape punishment, attempts were made to apprehend Easterby again. Under such circumstances, how would an innocent man have conducted himself, having already abandoned to the underwriters, and being in the course of claiming payment from them, if he learned, from any quarter, that there was a charge against him, or a suspicion of any guilt whatever attaching to him? It is the course of innocence, I think, generally,—and men find their advantage in it, and therefore it is the course of an innocent man,—to come promptly to those who have any charge to make against him, to state, Here I am, amenable to the justice of the country, ready to meet all that can be objected to me. Gentlemen, it is a fact, that in this

case a warrant was obtained against Easterby; that he was inquired for at his dwelling-house upon Saturday, again upon Sunday; and it was not till he was informed that his house was so surrounded by the officers of justice, that it was impossible for him to escape, that he surrendered himself, and is made amenable to justice.

Gentlemen, there is a circumstance in the case, as it respects the conduct and credit of the witness Cooper, which it is fit I should state to you, because it places him in a condition very different from that of almost any other witness whom I have ever seen examined in a court of justice, who is justly and fitly called an accomplice. You will observe, that Cooper, whom I am to offer as a witness, was not engaged, originally, as mate of the vessel, but entered himself as a plain ordinary seaman before the mast, expecting no promotion, nor any advantages beyond his stipulated wages; you will find him, upon the dismissal or retiring of the mate, originally engaged for the voyage, suddenly, unexpectedly, and, indeed, against his own opinion of his want of qualification for the office erected into the character of a mate, the confidential friend of the captain of the vessel; you will find him entrusted with all the secret of the intended destruction, and, at last made the actor in destroying this vessel, for the reason assigned by Codling, that he could not, conveniently, execute the manual part of it himself; you will find, that Cooper was warned by the owners at Brighthelmstone that he must, for their sake and for his own, take care to avoid being seen at London, he must keep close or be under sentence of death; he had nothing to do then, but under some such name as that of Postgate or Postato, to have taken his passage to Hamburg, where he might have shipped himself on board of some of the numerous vessels daily resorting to that port, and by resuming his former station of a seaman before the mast, have baffled inquiry and eluded search.

We shall see how he conducted himself, he came up to London, and remained as might be expected in a thoughtless English sailor, two or three nights in the neighbourhood of Darkhouse-lane, the natural resort of seafaring people, but having had an intimation that if he should be found at large in London he would be under sentence of death, he sets out and walks to the house of his mother at Saxmundham in the county of Suffolk. Gentlemen, I do not pretend to state him to you to be innocent, but I state him to be an accomplice; I state him as a man certainly guilty; as a man not entitled to full credit, unless he shall be confirmed; but I consider him as a man comparatively innocent; let us mark his conduct, and see whether it does not entitle me so to consider him; he presents himself at the house of his mother, a woman in low circumstances, in an obscure station of life, at Saxmundham; his mother and sister

come and say, Oh, there has been somebody here inquiring after you about sinking a vessel off Brighthelmstone. Have they so? (says the witness), who is the constable of the place, I will go and surrender myself immediately; I did certainly bore the holes in the bottom of the vessel; I did certainly drive the crow bar through her sides, but I did all this by the desire of captain Codling, the master; I am ready to deliver myself up to the justice of my country, and give an account of all I know of the transaction. He studiously sought the means of being taken into custody; he found those that thought they had not a right to take him; he afterwards looked out for those who came from London to apprehend him; he surrendered himself to them, and told them the story, which, to-day, he will, upon his oath, repeat in your presence.

Gentlemen, I have now very nearly closed the statement of the facts of the case which I find it necessary to make to you; I have mentioned to you circumstances of confirmation to which it is impossible, as it seems to me, to furnish an answer; if I could find an answer I would state it; the prisoners will have an opportunity of doing it by the assistance of my learned and ingenious friends; I have already stated to you the circumstance of some valuable property being found in the house of Macfarlane; I proceed to state the same fact, with additional circumstances of guilt, as it applies to Easterby; I have stated the facts of goods never constituting a part of the cargo of this vessel, or withdrawn from the cargo, after they were put on board, that they were found, not indeed in the dwelling-house of Macfarlane, but found under the circumstances which I have stated, upon which by the by, you will forgive me if I make this observation; as to his declarations at the time of ordering their removal, you will recollect that I shall be under the necessity of proving them by a person who is admissible as a witness against the defendant Macfarlane only because she has not been married to him; I do her the justice to hope that she will state what belongs to truth and justice; but you will not expect that connected as she is, she will be extremely ready to give the account; this is what respects Macfarlane; with respect to Easterby, my means of proof are considerably stronger; I shall prove that not only in that dwelling house in which he endeavoured to secrete himself, goods to a considerable value, constituting part of the pretended cargo of the *Adventure*, were actually found; but I shall show, that after goods of value had been put on board the vessel, he himself fetched them out of that vessel, in breach of another law which interdicted such a transaction; and I shall show that he packed or caused them to be packed, for the express purpose of rendering it more convenient so to remove them.

considerable part, in point of value, consisted of plated and silver goods; these had been ordered, you will find, by the prisoners Easterby and Macfarlane, and I shall show that the whole investment and adventure, from the beginning to the end, was their joint act; you will find, that, after they had ordered a quantity of plate of a gentleman of the name of Hemming; they stated to him that they had other silver goods which they had procured from another house, and which they wished to be shipped together with his goods on board the *Adventure*. You, gentlemen, know, that upon the exportation of those goods there is a drawback, and therefore a debenture; the tradesman generally ships the goods himself, receives the drawback, and accounts for it to his employer; it is therefore regular for the tradesman accordingly to ship his own goods; for tradesman A. to ship the goods of A. and for tradesman B. to ship the goods of B. But it often happens, when goods are purchased of different tradesmen, that to save trouble, the whole is included in one debenture; the matter being afterwards easily arranged.

These goods, the plate, which was to constitute part of the cargo of the *Adventure*, were, originally, packed in one case; that seems to be the most convenient way, but Easterby objected that the package was too large: it was made into three packages; he still objected that they were too large, and they were made into six packages. Now, I have a right to expect to find these six packages of plate on board the *Adventure*, when she came into Brighthelmstone. The reason assigned by Easterby for having them distributed into six packages was, for the more convenient stowage in the lockers of the cabin; in the lockers of the cabin then I have a right to expect this plate, for it is right I should state that the goods found on board were carried to the custom house at Brighthelmstone, in the same state in which they will be proved by the witnesses to have been put on board by Easterby and Macfarlane, and in which they arrived in the vessel off Brighthelmstone. It has been suggested that they might be pillaged, but I will prove that the cargo was landed under the guard of a file of soldiers, and afterwards placed in the stores where it was under the double care of the officers of the customs and also of the salvors for their own advantage, and therefore the account that I shall give you of the cargo at Brighthelmstone must be taken to be the cargo, as it would have been described upon any genuine manifest of the vessel; then as I said in the lockers of this vessel when she arrived upon the strand at Brighthelmstone, I have a right to expect six packages of plate; shall I find them there? no, not one of them; I am at no loss to account for the circumstance of its not being found there, for I shall show you that Mr. Easterby, a merchant of London, sending out, in copartnership with Mr. Macfarlane, in a vessel of

Of the cargo of the ship *Adventure*, a con-

their own, a cargo of goods, which they state to be of the value of nine thousand pounds, or somewhere thereabouts (for I speak much under the mark), that Mr. Easterby was found, one night, before this vessel had cleared out from the river, taking out of her these packages of plate, and conveying them to his own dwelling-house. I will prove to you that he declared he had done so, and I believe I shall satisfy you that that plate afterwards constituted a part of the cargo of another vessel, the William, belonging to Easterby and Macfarlane, which has sailed to the West Indies, whose contents, therefore, I am not able to state to you; but the manner in which they were afterwards disposed of does not appear to me to be very material; the fact of their removal from on board by the prisoner Easterby, will be incontestably proved.

The facts, then, of this case, are shortly these: my evidence will impute to Codling, the master of the vessel, the destruction of this vessel in his own presence, under his orders; by the hand of Cooper; that Reid was placed there as a supercargo (for that is the fair result of the evidence) in order to superintend the destruction of the vessel. There are minute circumstances respecting Reid, which I purposely avoid stating to you; you will attend to them in the course of the evidence; that he was there executing that duty so imposed upon him, and that the whole course of the conduct of Easterby and Macfarlane shows, that that which they originally communicated to Storrow to be the object of their voyage, still continued to be the object; that they sent a cargo out, not exceeding in value three, or, to speak to the very utmost, four thousand pounds, upon which in fact they had effected insurances to the amount of nine thousand pounds; and that they had ordered other insurances, which would have been effected but for the suspicion of a broker, that all was not right; which would have increased it to thirteen thousand pounds.

Gentlemen, this is the short state of the case; these are its prominent parts. It is as I stated at the outset, of the last importance to the dearest interests of the country, that you should decide upon it according to justice. It would be a gross piece of impertinence, after the experience we have had of your conduct in former sessions, especially after the two lamentable instances of human depravity which we had yesterday the misfortune to witness, to impress upon your minds its importance to the accused to say any more to you. You will give the full force to every doubt that can be suggested in their favour. That line of conduct has been frequently recommended to you from the highest authority, and the greatest wisdom; it would be impertinent in me to suppose that an attempt on my part to impress it more upon your minds, can be necessary, or would be proper.

EVIDENCE FOR THE PROSECUTION.

Thomas Cooper sworn.—Examined by Mr. Gibbs.

Were you ever a seaman on board the Adventure?—Yes, I was.

In what character were you originally shipped on board her?—Before the mast.

Who was the Captain?—William Codling.

He shipped you; did he?—He did.

Where were you when you were shipped first on board the vessel?—At Mrs. Bonus's.

Where was the vessel?—Below Limehouse.

Was any of her cargo then on board?—Some was.

Who was at that time the mate of the vessel?—John Douglas.

What did your crew consist of?—Two boys; me; Douglas the mate; and the captain. I do not know whether the supercargo, Mr. Storrow, belonged to her at that time or not; he used to be backward and forward; he sailed with us from the river.

To what place did you first go?—To Yarmouth.

Did you take any thing in at Yarmouth?—Yes, twenty-two hogsheads of tobacco, I think, and some rolls of linen, and fifteen ton of ballast.

Where did you sail to from thence?—To Deal.

How long were you at Yarmouth?—I cannot rightly say the time.

Did you ship any other person at Yarmouth?—A man, I cannot recollect his name; he was a bricklayer.

Was his name Welch?—It was.

Was Welch a seaman?—No, he was a bricklayer's labourer, as I understood.

Where did you proceed to from Yarmouth?—To Deal.

I believe you got safe to Deal?—The vessel had not been pumped out some time, and we put back off Aldborough.

However, you got to Deal?—Yes.

Did Douglas the mate continue in the ship?—No, he left the ship at Deal, from a complaint of the rheumatism.

How do you know that?—I heard him complain of being very bad with the rheumatism; he insisted upon leaving the vessel; he would not go any farther.

Did Storrow continue in the vessel?—No; he left her too; and Mr. Reid came on board as supercargo.

Is Mr. Reid one of the prisoners at the bar?—He is.

Did you ship any body else at Deal?—Yes, Lacey.

When Douglas left the vessel, who succeeded him?—I did.

What application did Mr. Codling make to you upon the subject; and what answer did you give him at first?—I was coming off in a boat, from Deal; the captain told me I must take Douglas's birth. I told him I was not

capable, because I did not understand navigation. He said, as long as I pleased him, that was plenty.

Did you sail from Deal as soon as you might have done, from the wind you then had?—No; we might have sailed before; the whole fleet lying there, sailed, some that day, some the day after, and we went out of the Downs alone.

What was the reason of your waiting?—The captain said, he was waiting for the return of some letters, and that he did not like the wind.

The wind was such, however, that you might have sailed?—It was not altogether a good wind, to be sure, but other ships sailed.

When did you sail?—I do not recollect.

How long was it before the ship was sunk?—I believe it was about five or six days, but cannot rightly speak to a day.

I suppose you had a boat belonging to the vessel?—We had.

Did captain Codling give any orders about the boat?—Before we went out from Deal, he gave strict orders that nothing should be put into the boat, and that we should be sure to have four oars in the boat, and nothing else. I put the oars in; there were two of them too long to go into the boat, and I cut them myself.

Had you orders to prepare any thing else for the boat, but the oars?—We formerly used to put the lumber into the boat, the loose things that were about the deck, but the captain ordered us not to do that; it is well known to the ship's company besides.

Are the thowls moveable or standing thowls?—He gave orders to have thowls kept in the boat; I put them in the boat; there were thowls plenty, I cannot say how many.

Had you any conversation with the captain concerning the state of the vessel, whether she was fit for the voyage?—The captain told me we should not be in her forty-eight hours longer; what he meant by that I did not know, he did not explain his meaning.

Did he say any thing more to you then?—I do not recollect that he did at that time. On Saturday, at ten o'clock in the evening, he told me, that was the last night I should be in her, for that she was not capable of carrying us through the Bay; that he did not think her trust-worthy for his life, and why should I, or any other.

What did you say to this?—I was in liquor at the time; we had a keg, half full of liquor, that was left out that night, and I was sent down several times to mix grog, and I made very free with it.

By whom were you sent down?—The captain; and I mixed for Mr. Reid and Mr. Codling, and handed it up upon the deck, and I believe some of the ship's company besides had some of it.

Did the captain, that evening, give you any other orders?—He did. I was walking the

quarter-deck, he was at the helm, he called me aft to relieve him; I took the helm, and he went down below into the cabin.

How long did the captain stay before he came up again?—It might be about a quarter of an hour, but I cannot speak to any time: he came up again, and told me to go down, and I should find an auger lying on the cabin deck, and I was to go down and take the scuttle hatch up, and bore a hole close in the run, that is as near the bottom as possible.

In consequence of these orders from the captain, did you go down?—I did.

Did you find any augers there?—I did. This was a new auger, it had no handle made to it, but the captain had shipped a handle of another auger through the top of it; I found it so when I went down.

Had the captain given any reason for sending you to do this, rather than doing it himself?—No, he had not.

What did he say to you, when he told you to go down?—He said she was not fit to carry us through the Bay.

You said the captain first went down into the cabin himself, then came up, and bid you go down?—Yes.

Did he give any reason why you were to do this, rather than himself?—No.

What did he say to you?—He said she was not fit to carry us through the Bay; that is all I can say.

Then you say, you took this new auger, and bored a hole?—Yes.

Where did you bore it?—Close down in the run, on the larboard side.

Did you bore more than one hole?—Yes; I think I bored three.

There were three augers, were there there?—No, not three augers, one was a large spike gimblet.

An instrument you could bore a hole with?—Yes.

What sized place was it you were to go in, to bore the holes?—A small place, I could not stand upright in it.

Was it a place the captain could have gone into?—I suppose he could have got into it, but he could not stand upright in it.

Did he say whether he could get into it, or not?—Not at that time, not when he came up, he did not say that.

Did he at any other time?—Yes, he said he was too clumsy to do that.

When did he say that?—It was about ten o'clock, just before he went down.

After you had done this, did you come on deck again?—I did. I told the captain I had bored the holes, and had left the augers in the holes; he made answer, "well, let them stand till day-light."

Did he ask you any other questions about the holes?—He asked me whether I had bored any more?—I told him I had bored one with the small one; that was the one which was shipped into the handle of the large one.

How many holes did you bore with the

small one?—Only one; I think there were three different ones.

And you told him you had left the augers in the holes?—Yes. He made answer, we should let them stand till day-light.

This was the Saturday night?—The Saturday night.

On the Sunday morning was any thing farther done with these augers, and the holes?—We had breakfasted on the Sunday morning, in the ship; the cabin-boy was not allowed to come down.

Who prevented him?—The captain.

Was it usual for the cabin-boy to come down at breakfast?—Yes; he always came down before this, and got his breakfast in the cabin.

Who pulled the augers out of the holes?—I did.

When did you do that?—It was on the Sunday morning, about day-light.

After the augers were pulled out of the holes, was any thing farther done in order to let the water pass more freely into the vessel?—Yes, a crow-bar was struck through her; I struck it through her; the captain was down in the cabin at the same time; he wanted to find a maul to make a bigger hole, because he thought she did not fill fast enough; I made answer, there is a crow-bar; he said that is the very thing, and told me to take it, and I took it.

What were you to do with it?—To make a bigger hole.

Did he tell you that you were to do so?—He did. He was down at the time I did it, and lent me a hand to knock the lockers down.

Was it necessary to knock the lockers down for the purpose of getting at this place to make the holes larger?—Yes, it was; and the captain lent a hand to knock the lockers down, and I struck the crow bar through her bottom; it went through her, and I never saw it afterwards.

You did that by the captain's direction, you say, he being present at the time?—Yes.

Where were the augers?—I believe I left them down below in the run.

When you had struck the crow-bar through the bottom of the ship did the water come in?—Yes, freely, about the thickness of my arm.

When you saw the water flowing through, did the captain give you any direction to call any one?—I cannot recollect that he did.

Where was Mr. Reid?—He was a bed; he sent me down to Mr. Reid, to get him up; that was before the hole was made with the crow-bar.

Where was Reid at the time you made the holes with the augers?—In bed.

How near was his bed to the place where the auger holes were made?—Close by.

About as near as I am to you now? (about four yards)?—Thereabouts.

Lord Ellenborough.—You had made the

auger holes at the time you went to Reid, but had not made the hole with the crow-bar?—Yes; I had made the holes with the auger, but not with the crow-bar.

Mr. Gibbs.—You say, Reid lay near where you made the auger holes?—Yes.

Did you speak to him?—No. But I heard him turn himself in his bed several times while I was about it, but he never spoke to me.

Did the boring of holes with the auger, make any noise?—I do not recollect whether it did or not.

You say, after you had made these holes with the auger, the captain directed you to call Reid?—Yes, the crow-bar hole was not made then.

Where was Reid when you called him?—In his bed; a few minutes after I called him, he came up upon deck; this was in the course of the night: he went down and went to bed again.

When he went down and went to bed again, did he go so near where these holes were bored that he might have seen them?—He could not see the holes, but he might hear the water running in, because the smallest hole was left open to keep the pumps going.

Could you hear the water running?—Yes; and the cabin-boy heard it when he went down for the captain's great coat.

One was left open to keep the pumps going that the ship might appear leaky?—Yes.

When you had called Reid by direction of the captain, you say he came upon deck to the captain?—He did, some time afterwards.

Where did he go then?—He was upon the quarter deck; after that he went to his bed again: it was in the course of the night, I cannot speak to the time.

Where was he at the time you beat this hole in with the crow-bar?—He was upon deck.

Do you know whether he saw the water coming in?—I cannot say.

He was permitted to go down and go to bed again?—He was.

The boys were not permitted to go down?—None of the boys were.

When the water was flowing in through this hole, as it had been made with the crow-bar, was any signal of distress made?—Yes. They hoisted the colours, the union downwards.

Were any measures taken to secure your escape in the boat?—The boat was out before that, and all the people in her, I think, but the captain and me; the boat was out before the water was up to the cabin deck.

Had you packed up your things?—When the captain told me on the Friday night, we should not be forty-eight hours longer in the ship, I did pack up my things, but I did not mention it to any one; I was ordered by the captain not to say any thing to any one.

What did you pack your things in?—A bread bag.

Where did you get that?—Out of the half deck.

Who permitted you to take it?—I took it. I emptied the bread upon the quarter deck.

Had the captain given you any leave to take it?—No, he had not.

How did the captain employ the crew while the water was coming in?—He ordered them to be taking in the sails, while I was boring the hole.

Were they placed in situations not to be able to hear or see what you were doing?—Yes. They were.

Is it necessary to go aloft to take in the sails?—It is, to take in the top gallant sails and things.

The men were in places where they could neither see nor hear?—They could not.

All the crew, except whom?—Except the captain and me, and Reid, who was in bed.

At what time did you quit the vessel?—About eight o'clock in the morning.

Do you remember any vessels coming from shore, in consequence of your signal?—Yea. Several boats came up, and said, captain, you have had a bad misfortune; he said yes, we have; they asked if we wanted any assistance, for they would take the vessel in tow, and take her into shore; he made answer, she belonged to him at present, while she swam, and he gave strict orders for them not to assist him; but they did against his will.

What words did he use?—That she belonged to him whilst she swam, and they had no business with her whilst she swam.

Do you remember the Swallow cutter coming up?—Yes. She took her in tow; after she had had her in tow some time, she righted, and went down. I and the captain, and Mr. Reid, were on board the Swallow cutter when she went down.

I need not ask whether she went down in consequence of those holes that were thus bored in her?—She did, to a certainty.

Was Reid's chest on board at this time?—It came on board at Deal, but was ordered on shore immediately. I brought it on board in the boat. I do not know what day; the next day it was taken on shore. I helped it into the boat; when it came on board, the trunk was open.

It was not brought on board again?—No. There was a lock upon it, and a lashing upon it besides.

Did you see what was in the trunk?—It was full of linen and things; I saw several white things, but I cannot say what they were.

What had Reid left in the ship?—I cannot say what he had left belonging to him.

When you came on shore, where did you all go?—To the Ship inn, at Brighton.

Who went with you?—The captain, Mr. Reid, and the ship's company, all went to the Ship inn.

Did Reid say any thing afterwards of what he had lost?—He said he had lost every thing that belonged to him; that he had saved nothing.

Where did he say that?—At Brighton.

Lord *Ellenborough*.—Whom did he tell that he had lost every thing that belonged to him?—He said that to a lady that came to see him, dressed in a blue habit. I should know her if I saw her, she is a Welch woman; there was one of the lads a townsman of her's, she gave him a shilling.

Mr. *Gibbs*.—Did Mr. Easterby, and Mr. Macfarlane, come to Brighton while you were there?—They did.

On what day did they get there?—I think on the Tuesday.

You got on Shore on the Sunday?—Yes. On the Sunday morning.

Did they come to you to the ship?—They did.

Did you hear any conversation pass between them and Codling, about the loss of the vessel?—They were discoursing between each other, but what passed I cannot say.

Did you hear Easterby say any thing to Codling?—No. He asked me whereabouts I bored the hole, and what size it was.

That was after he had been conversing with Codling?—Yes. They had been together before.

What did you tell him?—I told him, I could not tell him rightly the size. There was a chisel which lay upon the floor, and a hand-saw, and an axe; several carpenter's tools we had brought on shore with us. He asked me if the hole I bored was about the size of the handle of the chisel. I told him it was thereabouts.

Was Macfarlane by when Easterby asked you this?—He was in the room; but he did not speak to me.

Did he hear Easterby ask you this?—I cannot say whether he did or not: he was walking in the room.

Did Easterby speak loud enough for him to hear?—I cannot say.

When you said it was about the size of the handle of the chisel, what did Easterby say?—He said, I must get the handle out of the chisel, and sharpen the end of the handle, in order to plug up the hole, in case she drove ashore.

It was pretty clear, then, she would come on shore, was it?—Yes, it was.

Lord *Ellenborough*.—Did he ask you whether the hole you bored, or the holes, were about the size of the chisel? Did he speak of one hole, or more?—The hole, I understood him.

Mr. *Gibbs*.—Did either Easterby or Macfarlane say any thing to Codling about the place in which the ship had been destroyed?—They might; they were discoursing; but what passed I cannot say.

Did they make any observation about its being done on the coast of England?—Yes;

Mr. Easterby told Codling he was a damned fool, and had made a stupid job of it; that he might have taken her to the coast of France, and then they might have taken the boat, as it was fine weather, and have taken either shore.

Was Reid in the room when this conversation passed?—He was, I believe.

And Macfarlane?—Yes Macfarlane was.

And nobody but Reid, you, Easterby, Macfarlane, and the captain?—Nobody else.

Do you recollect whether Macfarlane asked any questions?—I do not recollect that he did.

What did Macfarlane say?—I cannot tell what he said; he was discoursing with the captain and Mr. Easterby: they were talking together; but what he said, I cannot tell.

Were they talking about the ship?—I cannot tell.

Lord *Ellenborough*.—Did Easterby say that which you have mentioned about his being a damned fool, and having made a stupid job of it, loud enough for Macfarlane and Reid to hear?—He did not speak it very loud; but whether they heard or not, I cannot say: they might have heard it.

Mr. *Gibbs*.—What sized room was it?—A pretty large parlour; and Macfarlane was walking backwards and forwards.

Did they tell you what you were to do, or where you were to go?—Macfarlane and Easterby ordered the captain and I to go to London, and take a private lodging.

Did they tell you why you were to do this?—Mr. Easterby told me, that, in case I did not keep myself close, I should be under sentence of death.

Was a place taken for you?—Yes; Mr. Macfarlane booked both of us, and paid the passage; and I received a note from Reid, pointing out, where I was to go to Macfarlane's house in London, which was wrote upon a piece of light grey paper with a pencil. Mr. Reid wrote it himself in the street, as we were going to the coach office.

What is become of that paper?—I lost it.

Did you receive your wages?—Yes; nine shillings for my wages; and Mr. Macfarlane gave me a guinea.

Was that before or after you had given this account of the size of the hole that was bored?—Afterwards.

Do you know whether the other men were paid their wages?—I cannot tell: I never saw any money paid down.

You came up to London by the coach?—Yes.

Where did you go when you came to London?—To Darkhouse lane.

With whom did you come up?—A little boy. A gentleman came and stopped captain Codling, and told him he could not go.

Who was that gentleman?—I cannot tell.

Had the place been taken in Codling's name?—I do not know any farther than Mr.

Macfarlane and Mr. Easterby said, that I was to go to London with the captain, and we were to take private lodgings.

The captain being stopped, you went up with one of the boys?—Yes; the captain went up, and could not find the room where they were; then Macfarlane went up; and I went up; and the boy came down, buttoning his jacket up.

At what time was that?—About five or six o'clock: I cannot say exactly what the time was.

They got the boy into the coach with you?—We went to the coach office, where the coach was to call; there we waited. Mr. Reid went down along with me to the coach; and Mr. Macfarlane came to me afterwards.

You went to town in the coach with the boy?—Yes.

What became of the boy?—He went to Mr. Easterby's.

What is the boy's name?—George Kennedy.

Lord *Ellenborough*.—Was he one of the crew that was on board?—Yes; he was, I believe, apprentice to Mr. Storrow.

Mr. *Gibbs*.—Do you remember, after the holes were made, and the water was coming in, any thing being said about the pumps?—One pump was on: we did not want to find the other by the captain's orders.

Do you remember one of the boys saying that he heard the water?—Yes, the captain sent him down for his great coat; the boy came up, and told him that the water was running; that there was a leak.

What time of night was this?—I cannot rightly say.

This was after you had bored the holes?—Yes; the captain told him to go forward, it was no such thing, it was only the water in the run. I took hold of the helm, and the captain went down himself, he came up, said it was only water in the run; he told me to go down, but jogged me as I went down; and told me not to say any thing. I went down, and came up again, and said it was nothing but the water in the run, but to be sure I knew otherwise.

You staid a couple of days in London?—Two days, I think; I slept two nights, then I went to my mother's at Saxmundham.

How did you go?—I walked down; I wanted to get a ship, but could not get one; then I walked down to my mother's; it is eighty-eight miles.

Did you hear there that any one had been after you?—I heard afterwards there was a hand-bill out against me, with a hundred guineas reward. I sent for Mr. Ashkettle the next day; he is a farmer in the parish, and a constable; he came, and I surrendered myself; I told him he must take me to London, that I heard there was a reward about me, and I laid the case down in every thing to him, as I have done to-day.

Thomas Cooper cross-examined by Mr. Fielding

How old are you?—I was twenty-four, the 7th of last May.

Only twenty-four! so you have no doubt that this vessel was sunk in consequence of the holes which you made?—Yes.

When you made these holes, you were in the cabin, by yourself, and the captain upon the deck, at the helm?—The captain was down with me when I broke the hole with the crow-bar.

When you made the auger holes, you said the captain was at the helm, and you below by yourself?—Yes.

You said, that when the hole was enlarged by the crow, the captain was in the cabin?—There was no hole before I put the crow through.

Are you now aware that you stand confessed the perpetrator of all this guilt?—I cannot help it.

Are you aware, that you now, by your own relation, are proved to be the perpetrator of the whole of this guilt, by your own hand?—I made the holes, I own.

When you went out of town, to Saxmundham, you heard that there was a reward published for your apprehension?—When I got down, not before; if I had, I would have surrendered myself in London.

What made you surrender yourself?—Because there was a hundred guineas reward, and I knew what had been transacted.

Then the hundred guineas reward, you thought, you should be entitled to, if you told your own story?—There was no such thing required; I gave myself up, so that it should not be had, and no one should receive it.

What induced you to give yourself up?—Because I knew what had been transacted.

You knew, that you had made the holes by which this ship had been sunk?—Yes, but it was by the captain's orders.

What induced you to surrender yourself?—There was an hundred guineas reward, as I heard.

Did you suppose that this hundred guineas would come to you, in consequence?—No, no, by no means.

What was the inducement that made you go to the justice, and tell any story about this?—Because I knew I bored the holes, and that the thing was not right.

Did you mean to tell the story of your own guilt, and put yourself to the risk of being hanged?—I knew what I had done.

Did you mean, when you surrendered yourself, to repent of your crime, and to put yourself in the way of trial, and of being hanged?—I did think about it, to be sure; I knew I had done wrong.

Then you knew that the consequence of your surrender and confessing this guilt, must be, that you must be condemned and hanged?—Well, then, I could not help it, I

trusted to God Almighty; I did not know whether I should or not; I hoped the Almighty would judge.

You repented of the crime?—I did.

And meant to surrender yourself up to the laws of your country?—I did.

What became of you when you surrendered yourself to this headborough at Saxmundham?—No, at Benhall, a mile on this side of Saxmundham.

Was that to a constable?—Yes, William Ashkettle, a farmer.

What became of you?—They thought of coming by the coach, but they thought the coaches were dangerous, as there were two opposition coaches, and they did not think to come by them.

By what conveyance did you get into London?—In a post-chaise.

Who came with you?—William Ashkettle and Mr. Stopher.

Where were you carried to?—To the lord mayor; there was some house I was carried to before.

Whom did you see at the lord mayor's?—I saw Mr. Newman, and he took me into a private room, a parlour.

Were you committed?—No.

Did you make a disclosure, so far as you knew of the transaction, at that time, when you went before the lord mayor?—Just as I have now; what I had seen, and what I did, I told.

Then, at that time, you made an accusation of captain Codling; you did not confine your story to your own self, but accused captain Codling, as you have done to-day?—I left it to the Almighty; I told what I did.

You told the whole story to the lord mayor?—I did.

Did you understand, upon this examination, or after it, that you were to be admitted a witness for the crown, and to save your own life?—Never a soul mentioned any thing to me yet.

Where have you been, since you were examined?—In the Compter.

How many examinations have passed therein?—Three, I think.

Have you seen Mr. Lavie, that gentleman?—Yes, I remember that gentleman.

Has he been with you in the prison?—No.

Where did you see him?—I saw him before the lord mayor.

Have you communicated your story to him, and answered different questions, as he might put them?—No, I spoke it in the presence of my lord mayor, before different people.

When did you understand that you were to be admitted as a witness here?—I have never been told it yet.

Did you expect you were to come to-day, and be tried for your life?—If I deserve it, I am willing to suffer.

That you deserve it is beyond all question. —I hope the saddle may be set on the right horse.

Answer my question; and understand it, before you give an answer; did you expect, when you came into this court to-day, that you were to be tried for your life?—I do not know; I come to speak and tell the truth, if I suffer for it.

When you shipped yourself, was your agreement made with captain Codling or the owners?—With William Codling.

Do you know, that when Douglas quitted the ship, captain Codling was looking out for another man to supply his place?—He was at Deal, and Mr. Reid came down to the beach and asked me if I would take his birth; I told him I was not capable of taking his birth, because I did not know navigation.

On the Friday night you had packed up all your things?—Not all, I had the best of my clothes.

Then no more conversation, than what you have related already to my lord and the gentlemen here, passed between you and captain Codling?—I do not recollect any thing more at present.

When you went away from Brighton you only got nine shillings as your pay, and the guinea?—No.

You got nothing from captain Codling?—Nothing.

Nothing, from first to last, from him?—The captain gave me a bran new coat at Brighton, in the room.

You got no money from him?—No.

Nor did you expect any thing?—No farther than the captain told me he would get me a birth, and would take care I should not want for a birth, and the like of that.

There was no one person on board this vessel, that ever heard a syllable that passed between you and captain Codling?—I cannot tell; I do not think there was, unless it was Mr. Reid, and I cannot say whether he did or not.

The ship was under the steerage of captain Codling when she arrived at this spot off Brighthelmstone; he was at the helm, was he not?—He was commander of her undoubtedly.

How soon after you made the signal of distress was it, before the boat came off from the shore?—I cannot say the time.

A few minutes?—No, they had a long way to come, I suppose six or seven miles; but I cannot speak to a mile, or half a mile.

The captain and you both kept on board this ship after the hawser was fastened to her?—No, we both went on board again to get her head in shore, in order to make it believed that we wanted to get her in shore.

You wanted to get her head in shore to make them believe you wanted to get in shore?—Yes.

But you did endeavour to get her head in shore?—Yes.

When the cutter took her in tow, you went on board the cutter that was towing?—Yes, the Swallow.

As to this boat, it is no unusual thing at all for the boat of a vessel to be clear of every other article but her oars, saving a few articles that may be about the deck?—That is nothing but what is right, only it never was done before on board of her.

You and the captain remained on board the Adventure when several of the crew had got into the boat alongside of her?—Yes.

The captain, in fact, did not quit her, but insisted that she belonged to him while she swam?—We had left her at this time; we did not like to lie too near her, lest the suction should draw the boat down.

You went on board the cutter?—Yes, I and the captain and Mr. Reid went on board the cutter after she had her in tow; the captain went on board before, as he did not like to have the shore people take the vessel in charge.

But when the revenue cutter came, he gave every assistance?—The cutter did.

And captain Codling gave every assistance he could to the crew of the cutter to take her in tow?—I do not know any thing about that.

You have told me you had no expectation of any money, or any reward, from captain Codling?—I had not, if I die for it this minute.

Nor was there any thing passing between you, more than what you have related, till you went into the cabin to make these auger-holes?—I do not recollect any thing else.

You never, in fact, received a halfpenny from the hand of Codling, nor was any expectation formed by you that any money was to come?—None, so help me God, no farther than what I told you; that I should have a better birth, or never want for a birth.

You were perfectly aware, I take for granted, of the wickedness you were committing when you made these holes?—He said, she was not trust-worthy for carrying us through the Bay; I had nothing to do with the ship, it was the captain's property, to the best of my knowledge.

You had packed up your things, you say, on the Friday?—I had.

Had you communicated those opinions or suspicions to any part of the crew?—No.

You packed up your own things, and said nothing to any body?—I did not: I had orders to say nothing, by the captain.

But, notwithstanding that, you packed up your own things on the Friday night?—Yes.

Thomas Cooper, re-examined by Mr. Gibbs.

From whom had you orders not to say any thing?—From the captain, William Codling.

When the captain told you she would not last forty-eight hours, was it then he told you that he would get you a better birth?—Yes, on the Saturday night, at the time I bored her.

Did you, voluntarily in writing, give the same account to the lord mayor, which you

have now given?—I did, as near as I can recollect.

And that account was taken in writing; it was read to you, and you signed it?—Yes.

John Morris sworn.—Examined by Mr. *Knowlys*.

Were you an apprentice to Mr. Storow, who went as supercargo in the *Adventure*, as far as *Yarmouth*?—Yes.

When did you go on board the *Adventure*?—I cannot tell rightly.

Was it whilst she was in the river, or after she had sailed on her voyage?—I went on board her while she was in the river.

Do you know Mr. Easterby?—Yes.

While she was in the river, did she take in any loading there?—Yes.

After she had taken in her loading in the river, did you ever see Mr. Easterby come to the ship?—Yes.

What part of the day or night did he usually come to the ship?—Sometimes in the morning, before breakfast; sometimes after breakfast; and sometimes in the evening.

Was there any part of the cargo taken away when Mr. Easterby came in the day time?—There was some sugar and tea taken away one evening.

Was any thing taken away in the day time?—No.

Do you recollect Mr. Easterby coming in the evening at any time?—Yes, one evening.

What did he do when he came in the evening?—He went down into the cabin, and got up some parcels of tea and sugar, and got them into the boat.

How did you know that they were parcels of tea and sugar?—When they came on board, I saw some of them opened for the ship's use.

What packages were they in?—In blue paper and brown paper.

Large packages or small?—Not very large nor small.

Whereabouts might be the weight of them, do you judge?—Ten or fifteen pounds, I think.

Was that all that was taken away at that time?—I do not know.

Did he come after that?—Yes, he did.

Did you see any thing taken away after that time?—No; not any thing else. There was bread, and flour, and peas, that went to the *William*, after they came on board.

Whom did the *William* belong to?—To Mr. Easterby and to Mr. Macfarlane, I believe.

Those things were taken from the *Adventure* to the *William*?—Yes.

Was this whilst she was in the river?—Yes.

Did you leave the *William* in the river; or did the *William* sail before you?—I cannot tell.

Do you recollect any thing else going out of the ship besides these ship stores?—Yes; swivels, and a keg of paint.

Do you know Mr. Blagdon, the lighter-man?—Yes.

You went to *Yarmouth*, and then to the *Downs*?—Yes.

Who went as supercargo to *Yarmouth*?—Storow.

Where did he leave the ship?—In the *Downs*.

Who was the other apprentice of Storow, that was on board with you?—George Kennedy.

Who came on board as supercargo in the *Downs*?—Mr. Reid, in the place of Mr. Storow.

What baggage did Mr. Reid bring with him?—He had a bag, and a trunk, and a small bale; but I cannot tell what was in it.

Did you sail away with Mr. Reid's trunk?—No; the trunk was carried on shore by Kennedy and Lacey, while we were in the *Downs*.

Did it ever return?—No.

When you sailed from the *Downs*, how soon did you get off *Brighton*?—In three or four days, or more.

Do you recollect the Saturday-night before the ship sunk?—Yes.

What were you in the ship?—Cabin boy.

Did you generally prepare breakfast?—Yes.

The chief part of your duty was in the cabin, was it?—Yes. When I had nothing else to do, I used to do the ship duty.

What happened on the Saturday night and Sunday morning that you were off *Brighton*?—About ten or eleven o'clock, my master, Mr. Codling, sent me down for his great-coat; it was on one of the cabin-lockers.

At that time, were the cabin-lockers all safe and not broken?—Yes; quite safe.

Was the ceiling in good repair?—To the best of my knowledge it was.

You did not observe it broken at all at that time?—No.

Did you get the great coat?—Yes.

Did you observe any thing particular, or say any thing to the captain, when you brought up the great coat?—I took up the hatch of the scuttle, and I heard the water rushing in: I came up and told Mr. Codling that the water was rushing in; that I thought there was a leak there: he said there was no such thing, and he sent me forward to the fore part of the ship.

Did you proceed to pump the ship after that?—Yes; we were pumping very often.

How many pumps had you going then?—One.

Were there more pumps than one on board the ship?—Yes, two.

Did you make any trial to work the other pump?—No, not then.

When did you?—In the morning, about four or five o'clock.

Who was the person who knew where the pump-gear was?—I was.

Did you find the pump-gear?—George Kennedy was sent by one of the crew to get the pump-gear; he had got one step down the companion-ladder, going for the pump-gear, and the captain pulled him up.

Was the water gaining upon the ship at that time, in the opinion of the crew?—Yes, very fast.

You found by the pump it was gaining upon the ship?—Yes.

Did any of you get up the pump-gear of the second pump?—It was got up after a while.

By whom?—I cannot tell I am sure; Mr. Codling ordered me in the boat all the morning, so I cannot say who got it up.

Was there any necessity for your being in the boat?—Not that I know of.

Did you get any breakfast on Sunday morning?—Yes.

Where did you generally have your breakfast?—Generally in the cabin, after my master had finished his breakfast.

Was it your custom to serve your master with his breakfast?—Yes.

And to be ready if he wanted any thing?—Yes.

Did you assist the captain to get his breakfast that morning?—No.

How came that about?—I do not know; the master said, the mate would do all that was wanted to be done there.

The mate was Cooper?—Yes.

After the master and the mate had got their breakfast, did you go down to the cabin to get your breakfast as usual?—No, the mate handed me a basin of tea upon deck.

Where was the captain at that time?—Upon deck.

Had you such a thing as a crow-bar on board your ship?—Yes.

Where was that lying on the Sunday morning?—In the half deck.

Was it taken from that place by any body?—Yes.

Who took it?—Cooper took it.

Did you see where he went with it?—Into the cabin.

Do you know where Codling was, at the time the mate took the crow-bar into the cabin?—I do not recollect whether he was upon deck, or below.

Did you go down into the cabin after the crow-bar was taken down there?—No.

Had you any occasion to go down into the cabin?—Only to get the breakfast things.

Were you suffered to go down?—No; Mr. Codling prevented my going down.

Did he give any reason why?—No.

What became of your ship then?—We kept pumping with the two pumps all the morning almost.

Did you make any signal for assistance?—Yes; just after we had all got into the boat but the mate and the captain, then the mate and the captain hoisted the signal.

Was that after the rest of the crew had

taken to the boat?—Yes; we were alongside in the boat at the time.

How long had the water been gaining upon you, and you been pumping, before you hoisted the signal?—I dare say, for three or four hours before the signal was hoisted.

In consequence of the signal being hoisted, did any boats come from the shore to your assistance?—Yes; after the ship had turned over.

When the boats came, did the people say any thing to the captain, or the captain to them?—The first boat that came said they would take care of the ship: the captain said, they had no business with the ship till he had done with her, and then he would give her up; that they had no business to touch her; he would give them her when he had done with her.

What care did they say they would take of her?—They said they would take her in tow, and engage to tow her in.

How many boats had they to get her in at that time?—There was only one boat then; but shortly after there came the custom-house cutter's boat.

Did the captain give any body leave to take her till the custom-house cutter came up?—No.

Did the cutter then take the command of her?—Their boat made fast a rope to the top-mast; then the cutter came down.

What became of the *Adventure*?—She went down. The top-gallant-mast and gallant-head was above water then.

The rest of the ship was below water?—Yes.

When the boats were coming up, did you see Reid, or hear him say any thing?—Reid said, he wished the ship might sink, for the thieves would plunder her if she got on shore.

Whom did he mean by the thieves?—The people that were in the boat, I suppose.

Did you all get ashore together?—Yes; we went on board the cutter first.

When you got on shore, do you recollect Mr. Reid saying any thing?—He said, all he had in the world was lost, and he was ruined for ever.

When you got ashore, were you paid your wages?—We got ashore on the Sunday morning, and put up at the Ship.

How long after you got ashore was it before you were paid your wages?—I believe it was the Wednesday or Thursday morning.

Who paid you?—George Kennedy and I were apprentices, and had no money to receive.

Did you see the others paid?—No; I only know they had got money.

Were you and Kennedy to go up to London together?—No; Macfarlane said one of us was to go up, the other was to stay.

When did he tell you that?—About seven o'clock in the morning.

Did you and Kennedy sleep together?—Yes; we slept in the same room.

Did you know that Kennedy was to go that morning?—No.

Who came to get Kennedy away?—Mr. Macfarlane.

The gentleman at the bar?—Yes. Mr. Codling came first to our room; then Macfarlane came, and said one of us was to go up to London, which was Kennedy.

Did you go with Kennedy to the coach?—No; I staid behind.

When did you go to London?—About nine o'clock the same morning.

Who went with you?—Mr. Codling ordered the coach for me.

Had you such things as augers on board?—Yes, we had two or three.

Where were they kept?—In the locker on the larboard side, in the cabin.

You went up with the captain?—No; the captain came to put me in the coach at Brighton.

Who went with you?—I went alone.

Had you any directions where to go to?—No farther than that I was to go back to my master.

John Morris cross-examined by Mr. Sergeant Bayley.

You say Reid brought a bag, a trunk, and a bale on board?—Yes.

The trunk afterwards went back again?—Yes.

What time was it when it went back?—I cannot tell rightly; it was Kennedy and Lacey took it.

Did you see it go on shore?—I saw it put into the boat.

What time of day was it?—It was after dinner.

In what month?—I cannot tell.

Was it in the summer?—Yes.

Whether Reid had taken any thing out of the trunk or not, you do not know, do you?—No.

What the trunk contained, when Reid sent it on shore, you cannot tell?—No.

You say Reid said, he wished the ship might sink, for, that if the thieves got her on shore they would plunder her?—Yes.

Where was he when he said that?—In the boat.

Who was in the boat at that time, besides you and Reid?—We were all, except that Codling was gone in the cutter's boat to the cutter.

Then all the rest of the crew were in the boat at that time?—Yes.

Mr. Garrow.—We propose to call the rest of the crew, whom we shall examine very shortly, on our part; our view in calling them is, that they may be subject to cross-examination on the other side, if it shall appear that any thing material may arise out of it.

George Kennedy sworn.—Examined by Mr. Marryat.

Were you an apprentice on board this ship,
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the *Adventure*?—No; I was an apprentice to captain Storrow.

Did you sail on board the *Adventure* on her last voyage?—Yes.

Were you on board her at Yarmouth?—Yes.

Was any thing taken on board her there?—Yes; tobacco and ballast.

Do you know what quantity of ballast was taken on board at Yarmouth?—No; I do not know how much.

Were you on board her when she was off Brighton?—I was.

Were you on board her in the Downs?—Yes.

Did Mr. Reid come on board you there?—Yes.

Did he bring any trunk with him?—Yes.

Was that trunk taken on board?—It was.

Did it continue on board?—No; it went ashore again in the Downs.

Was Mr. Easterby down at Deal at that time?—Not at the time the trunk went ashore, I believe.

Was he down at Deal at all?—Yes.

Did this trunk come on board again?—I and another boy carried it from the Yarmouth Packet to the Royal Exchange, to go up by the coach.

Was it full or empty, when you carried it?—Full.

Did any thing happen upon the evening before the ship sunk off the coast at Brighton?—Yes.

Where did Cooper use to sleep?—In the forecabin with the crew.

Where was he the night before she was lost?—He was asleep forward, with us below.

Was he with the people in his own birth, or any where else?—He was in his own bed.

What night are you speaking off?—The night before she was sunk.

I mean the night she was sunk?—Oh, he never came below that night.

Where was he then?—Aft in the cabin along with the captain.

I am speaking of the Saturday night?—Yes; the night she was sunk.

Were you ordered to do any thing in the course of that evening?—Ours was the first watch on deck that night.

Whom did your watch consist of?—Me, Thomas Cooper, the mate, and James Welch.

Did the captain come up in the course of your watch?—He came up upon deck.

Did he give any orders to you?—No; he did not give me any orders.

Were you employed in any way respecting the sails, in the course of the evening?—Yes.

Who gave you any orders respecting them?—Mr. Codling.

What did he order you to do?—To stow the jib.

Did you go up and do so?—I did.

Did any body else go with you?—Nobody came out till we were just done.

Was Welch employed in any way?—Yes;

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he came up just as I had done stowing the jib.

Where was the mate at this time?—He was aft.

Did you go down into the cabin afterwards?

—Yes; I was going down for the pump bolt, and Mr. Codling took me by the hand and prevented me.

What did Codling say, or do, for the purpose of preventing your going for the pump bolt?—He took me by the hand, and held me back as I was going down to the cabin; he told me the mate could find it.

Had you been pumping before this?—Yes; we pumped every two hours.

Had you been pumping with one pump?—Yes.

What was the reason for getting the second pump?—Because she was filling very fast with water.

Did the captain know what you were going down for, at the time he stopped you?—Yes.

After he told you that the mate could find it, how long was the mate before he brought up the gear for the second pump?—He did not bring it up for a great while; he brought a great pump bolt that would not fit it.

Did he get the right at last?—No; he did not.

How long was it after you were prevented going down, before the second pump was set to work; was it set to work at all?—Yes.

How long was it after you had proposed going down to fetch the bolt, before the second pump was set to work?—I cannot pretend to say.

An hour?—And more.

Was the ship filling very fast all this time?—Yes.

Do you remember the mate coming upon deck for any thing?—Yes; I saw him fetch the crow-bar out of the half deck, and carry it into the cabin.

Where was captain Codling at this time?—He was aft.

After the crow-bar had been carried down into the cabin by the mate, did you observe any difference in the water?—Yes; it began to fill very fast.

Did you perceive a difference with respect to the quantity of water that was gaining upon the ship?—Yes.

At what time did you and the rest of the crew take to the boat?—A little after nine o'clock, I believe.

How long was that after the crow-bar was taken down?—I think that was taken down between seven and eight.

Had any signal of distress been hoisted before you took to your boat?—Oh, yes; just as the vessel was going down, the signal was hoisted.

How long after seven o'clock was it, that the signal of distress was hoisted?—It was not above half an hour before she went down.

Did the boats come off in consequence?—Yes; after she was upon her beam-ends, the boats came.

Did you hear Mr. Codling say any thing to the people in the boat?—He bid them keep off, he had not done with her yet; that after he had done with her, they might take her.

Did Mr. Reid say any thing, either to them or to you, respecting the ship?—No, he did not, he was crying.

You did not hear him say any thing, either to the people in the boat, or to the crew?—Not about the ship.

Did he say any thing about the men in the shore boats, in your hearing?—Yes, he was wishing that the vessel might sink, because they would only plunder her if she got on shore; this was when we were in our boat.

Were you, at any time, down in the cabin, after you were sent to stow away the jib?—No, I was not, they would not admit me to go into the cabin.

Whom do you mean by *they*?—Mr. Codling.

Did any body else prevent your going into the cabin, but Codling?—No.

Do you remember the owners coming down to Brightelmstone?—Yes.

What did they say to you?—They went off in the boat with us.

Did you hear them say any thing respecting her?—No.

Did you come to town with Cooper?—Yes, I did.

When did you come?—We were three or four days in Brighton, before I came up.

How long before you came to London, did you know that you were to come?—Mr. Codling came and called me out of bed early, and told me I was to go to London; that I was to go down to my master.

Who took your place for you?—Mr. Macfarlane.

Did you see Mr. Macfarlane that morning?—Yes, he was in the coach-office where he took our place, before the coach came to the office.

George Kennedy cross-examined by Mr. Gurney.

Reid's trunk, you said, you took from one inn to the other, to go by the London coach?—Yes.

How was it directed, was it not to his wife, to Mrs. Reid?—I did not take any notice of that.

It was booked?—Yes.

You were not desired to make use of any concealment respecting it; you did it publicly?—Yes.

Mr. Garrow.—Should you know the name it was directed to, if you were to hear it mentioned?—No, I should not, because I did not take any notice.

Lord Ellenborough.—Who gave you directions where you were to take Reid's trunk to?—Mr. Codling came from the Yarmouth Packet, the public house to where we brought it to; the trunk went on shore the day before it went up.

Lord Ellenborough.—Did you carry the trunk on shore in the boat, or did you find it at the Yarmouth Packet?—I do not recollect that I was in the boat when it was carried on shore.

Lord Ellenborough.—How did you know it was Reid's trunk?—Reid told me so.

Lord Ellenborough.—Where did he tell you so?—On board and on shore.

Mr. Garrow.—Did you ever see him take any thing out of it, or put any thing into it?—No.

John Lacey sworn.—Examined by Mr. Garrow.

Where did you ship yourself on board the Adventure?—At Deal.

How long before she left the Downs?—Two days.

When did you arrive off Brighton?—The eighth, in the morning.

What day of the week was that?—Sunday.

You consider yourself as arriving there on the morning the vessel was lost?—Yes.

Who was your mate from the Downs to Brighton?—Thomas Cooper.

Where was his birth?—Forwards, in the fore-castle, with the people.

Where was he, in the course of the night of the Saturday and the Sunday morning in which the vessel was lost off Brighton?—He was up and down in the cabin when it was his watch below.

That is, when he was not on duty on deck, he was backwards and forwards in the cabin?—Yes.

Whom was he with when not in his birth upon deck?—Captain Codling.

Did any thing particular happen, which drew your attention in the course of that night, with respect to the state of the vessel, or what was going forward?—No, I could not give any account; I went aft to take the helm, as I usually did; the captain said he would keep it, and employed us in taking in the top-gallant sail and hauling down the jib.

Where was the mate at this time, while you were employed in hauling down the jib, and taking in the top-gallant sail?—In the cabin.

Did it appear to you that there was any necessity for employing you in that operation at that time?—No; it did blow a little.

You would not have thought of doing that of your own accord?—No.

After you had done this, do you remember the pump being tried?—Yes.

How were you as to water?—More water than usual.

Was one pump enough to keep you clear?—Yes, at that time.

Did you find the water gain upon you?—Not in the middle watch.

How soon did it begin to gain upon you?—At four in the morning, I took the first spell at the pump; there was much the same quantity of water as at two, when the other watch came upon deck, and the captain ordered me

to go to bed, and said, that the other watch should pump her out.

At that time did you find the water was gaining upon you?—More than usual before.

Were you upon deck when any inquiry was made for the gear of the second pump?—Yes; I was called by George Kennedy out of my bed.

Who had the care generally of that gear?—It was down in the cabin.

Do you remember any body proposing to go and fetch it?—Yes, John Morris did.

Did he fetch it?—No.

How happened that?—The captain said the mate would fetch it.

How far had Morris got towards fetching it?

—He was going down the companion ladder; he said he knew where it was, he was going for it; the captain would not let him go down, he said the mate knew where it was.

Was the second pump ever put to work?—Yes.

How long after Morris had made the attempt to fetch the gear, and was prevented by Codling, was it before it was set to work?—Half an hour.

Then were you called to assist at the pump?—Yes.

In what state was the water then?—I sounded the well, I found about three feet six inches water in the hold, on the weather pump.

That was a considerable increase upon you?—Yes.

And it still continued to gain fast?—Yes.

Did you keep both pumps going as well as you were able?—Yes.

Were you able to keep the water under?—No.

How long did you continue to do that, before any of you left the vessel?—Till between six and seven o'clock, I believe.

Then you kept the pump going about an hour or an hour and a half?—Yes.

And you found the water was gaining considerably upon you?—Yes; so that we could do nothing with her.

Was any signal made then?—The colours were hoisted.

At what time?—About six or seven o'clock.

Had they got into the boat before the colours were hoisted, or where they hoisted before they got into the boat?—John Morris and myself were in the boat before the colours were hoisted; the captain and mate still remained on board, they called me in to help hoist the colours.

Did you, during any part of that time, go into the cabin at all?—I did not.

Did any body get their breakfast on board that morning?—Yes; all hands.

Who used to prepare the captain's breakfast in the cabin?—John Morris.

Did he assist in doing his duty in the cabin as usual that morning?—No; he was not admitted.

Do you know that he was prevented from doing it?—Yes, he was, by captain Codling; he said the mate would hand his breakfast up to him, he should not go down.

The boy used to get his own breakfast below?—Yes; but the captain said the mate should hand it up.

Did he do so accordingly?—He did.

How lately had you been in the cabin before the ship was lost?—I was in her on the third, and on the fourth of the month.

You had not been there after you went from the Downs?—No; I was never in the cabin after we went from the Downs.

When you were there last, were the lockers all safe and sound?—Yes.

There was no breach in them?—None.

How was the ceiling, very safe and sound?—Yes.

Had you any carpenters tools, or augers in the vessel?—I saw a new chisel which was bought at Deal, brought on board by the captain.

Did you see any augers on board?—I did not, except one I sounded the well with, which was a very small one; I made a plum of it.

Where did you get it?—I do not know where it came from.

It was not your duty to be much in the cabin?—I never went down.

Did any boats come off from the shore when you hoisted your signal?—Several boats came; they said it was a shocking thing, and asked the captain if they should take her in tow.

What did they say they would do with her, if they should take her in tow?—I did not hear them particularly say any thing; the captain said, Keep off, I have not done with her yet.

Was this after the signal of distress was hoisted, and after you had all gone into the boat?—Yes; she was then upon her beam ends.

When a vessel is upon her beam ends, you have but very little hopes of her?—We cannot stay on board of her when she is upon her beam ends.

Where were you then?—Then the Swallow's boat came up.

That was a revenue cutter?—Yes; they stuck a flag upon her mast head, and then the shore boats came up, and all took her in tow; the cutter got the hawser upon her first at the first strain of the hawser she righted and went down.

Did you all go ashore together in the same boat?—No; we lay by till the cutter came up, we all went on board of the cutter, and then on shore.

Did you hear Mr. Reid say any thing about his loss?—Yes, he cried, and said he had lost his all, when he was in the boat.

Do you know what there was of Mr. Reid's on board that was lost?—I do not know.

Do you know whether his trunk was on board or on shore?—I took one trunk of Reid's from the Yarmouth packet, to the Royal Exchange, at Deal, to go to town.

Do you happen to know whom that trunk was directed to?—I did not see.

What became of you after you got to Brighton?—I remained at the Old Ship inn.

Did you hear Reid say any thing about the ship?—He said he had lost all his property, he had lost his all.

Do you remember his making any observation about the vessel sinking, while you were in the boat?—He said, he wished she was sunk that they might not plunder her; that was before we went on board the cutter.

Was that before she went down?—Yes.

You went ashore then, to an inn, at Brighton?—Yes.

How soon did Mr. Easterby and Mr. Macfarlane, come down?—The next morning.

I take for granted you were not much in their company?—No.

What became of you?—The ship's crew were put into the tap-room of the inn, except the mate, who was with the captain and owners.

Where was Mr. Reid?—Likewise with the captain and owners.

This was an unlucky accident for you, you lost your wages upon this?—No.

Did you get paid your wages?—Yes.

By whom?—Mr. Easterby.

All that was due to you?—Yes.

What became of you, afterwards?—I went to Deal.

James Welch sworn.—Examined by Mr. Gibbs.

Were you on board the Adventure?—Yes.

Where were you shipped?—At Yarmouth, in July.

Then you sailed for Deal?—Yes.

Did you see Mr. Reid on board?—Yes; I saw him on board.

Do you remember the night when the vessel sunk?—Yes; I had the first watch that same night.

How lately before that had you been in the cabin?—I had not been in the cabin that night, nor for a good piece before.

When you were there, were the cabin lockers safe, as they ought to be?—Yes; I had taken some things out of the lockers for dinner, the day before; every thing was as it ought to be.

You had two boys on board the ship?—Yes.

Who used to prepare the breakfast for the captain?—The boys commonly used.

Do you remember whether the boys were suffered to go down into the cabin, the day the ship sunk?—When the captain was ready for breakfast, the cabin-boy was not permitted to go down, by no means.

Who stopped him from going down?—The

captain stopped him, and the mate handed him a bason of tea up the companion.

Was it at breakfast time he handed him up the bason of tea?—Yes.

Who had the helm?—One of the apprentice boys had the helm.

You had two pumps on board?—Yes; I was one of the first watch; there was one pump at work then.

Did the water gain upon you?—Yes; and the second time, at twelve o'clock there was much the same quantity.

Could you get the second pump?—Not for a long time.

What was the reason of that?—The boy wanted to go down to the cabin for the pump gear, but the captain would not admit him, he said the mate knew where the pump gear was, and that he was the best to get it.

Had you the pump gear immediately after this, or did you wait for some time for it?—We waited some time for it.

How long?—I cannot tell, we had no watch nor bell.

A signal of distress was made at last?—Yes; that was hoisted between six and seven o'clock.

Was that before or at the time the ship was on her beam ends?—A long time before she was on her beam ends.

How long before?—I cannot say.

Did any boats come out in consequence of your signal of distress?—Yes; but the mate and captain came on board twice after we all left her.

When these boats came off from Brighton, did they offer to assist you?—Yes; the boat that came up to us said, shall we take you in tow; the captain said he had not done with her yet.

Then the boat did not take her in tow?—No; the Custom-house cutter's boat, that belonged to the Swallow came up; he said, I will take command of her, I am a king's boat, and he fastened his flag at the fore-top-mast-head, he fastened a hawser to her mast; captain Codling then went on board the Swallow; the cutter came up and had her in tow; the cutter fastened a large warp to her, and the weight of the warp sunk her.

Were Reid, Codling, and the rest of the crew in the boat with you?—Yes.

Do you happen to know what Mr. Reid had on board?—I cannot tell; but coming out of the cabin, I saw him get a pocket handkerchief and wipe his eyes, saying, I have lost all my property, I have lost what I worked hard for these twenty or thirty years; he came out of the cabin crying, after he had given two spells at the pump.

The Brighton men were trying to tow you on shore?—Yes.

Did you hear Mr. Reid say any thing about that?—He said the rascals are getting alongside of her, it is more for the sake of plundering her than to do any thing else.

He went on board the Swallow, and delivered a medicine box and a lantern to the captain of the Swallow; he said to the men who rowed him to Brighton, I have got but two guineas in the universal world to pay my expenses to London, what you can get take.

Did he say what he wished might become of the vessel?—I did not hear him; when we came to the Ship inn at Brighton we remained there three days, the third day Mr. Easterby and Mr. Macfarlane came down and paid me my wages, and I signed my name to a paper.

Mr. Edward Storrow sworn.—Examined by Mr. Garrow.

In what situation of life are you?—Captain of a ship.

How long have you been acquainted with Mr. Easterby?—About seventeen or eighteen years; ever since I was first bound apprentice.

Have you ever sailed in his employ as master of a vessel?—Yes.

Did he make any application to you, at any time, to sail in the ship Adventure?—Yes.

When did he first make that application to you?—In May last.

In what character did he desire you should embark on board?—As supercargo.

When did you become acquainted with Mr. Macfarlane?—In the latter part of April last.

Did Mr. Easterby ask you to become supercargo of the Adventure?—Yes.

Had you frequent conversations with Mr. Easterby upon the subject?—Yes; occasionally.

Was Mr. Macfarlane a party to any of those conversations?—Yes; one time in particular, and then after that, a few days before the ship sailed.

State to my lord and the jury what that conversation was, which Easterby and Macfarlane had with you?—About three weeks before the ship sailed, to the best of my recollection, I was in the parlour at Mr. Easterby's at Canada wharf—

That is where he carried on his business?—Yes, a conversation took place, to the best of my recollection; Mr. Easterby broached it.

Was Mr. Macfarlane present?—Yes, in Mr. Easterby's parlour.

Was any other person present?—No, Mr. Easterby said he did not doubt but many ships had been sunk, and might be sunk, and the underwriters taken in for the money; he did not say, at that time, that the Adventure might be sunk, only that there was a possibility of such things being done.

Was this after he had applied to you, and you had engaged to become supercargo of the Adventure?—It was after he had applied to me and I had agreed to go in the ship.

Who did they say were owners of the

ship and cargo?—Mr. Easterby. told me that he and Macfarlane were jointly concerned between them, as owners of the ship and cargo.

Probably you know Mr. Easterby's hand-writing?—Yes.

And Mr. Macfarlane's?—I cannot swear to his hand-writing.

Have you seen Mr. Macfarlane write?—I do not recollect that I ever saw him write.

Have you seen papers, with his signature, importing to be from him, respecting which you have transacted business with him?—I do not recollect any.

Does the signature to that paper appear to you to be Mr. Easterby's hand-writing?—It does.

[*It was put into Court.*]

Had you any conversation with Easterby and Macfarlane, at any other time, when Codling was present?—Yes, three or four days, or a few days before the ship sailed, Mr. Easterby sent in to my own house that he would be glad to see me, to dine with him; I did not dine with him, but after dinner I went in; I found there captain Codling, Mr. Easterby, and Mr. Macfarlane; a conversation took place; then they wished the ship to proceed.

Who was the speaker?—In general Mr. Easterby; he stated that they wished the ship to proceed from London to Yarmouth, from Yarmouth to Gibraltar, there to sell the whole of the cargo, either by private contract or by public vendue; after this was done, they thought an opportunity might be taken in the Mediterranean, to sink the ship, and the people might take the boat and get ashore, and that one half of the bills, for the amount of the cargo, might be romitted in private letters, and the other half in public letters, that the public letters might be shown to the underwriters, as the whole proceeds of the cargo, and so call upon the underwriters for that part of the cargo that was left on board, by the appearance of the letters.

Then the person who was to superintend the sale at the market at Gibraltar, was to send these accounts?—Nobody was appointed for that but the supercargo.

Was this at the time you were understood to be the supercargo for the voyage?—Yes.

Was this mentioned privately and secretly to you by Easterby, or said publicly in the hearing of the two other persons you have mentioned?—The whole of the conversation I have last stated was in the presence of Macfarlane and captain Codling, who were in the parlour all together.

When I asked you who was the spokesman you said Easterby principally; did either of the others make any observation in the course of the conversation?—Not particularly; Macfarlane said occasionally such a thing might be done.

Was Codling, at this time, engaged as master for the voyage?—Yes.

Do you remember any observation, made by Codling, in the course of the conversation?—Not any particular observation at all.

If you recollect any observations, state them?—Codling occasionally mixed in the conversation and said, he supposed it might be done.

This was not distinctly proposed to you to be done by you, but they spoke distinctly of that ship the Adventure?—Yes, that such a thing might be done with the Adventure.

Do you happen to know that, at that time, her cargo had been in part procured?—It was shipped, or the greatest part of it, as I understood, at that time.

Neither Macfarlane nor Codling objected to this proposed scheme, but each said they thought it might be effected?—I do not recollect either objecting to it.

But, on the contrary, they observed they thought it might be effected?—To that effect.

Was it your intention, when you attended to the proposal of becoming supercargo, to undertake the voyage in that character?—From the first engagement, I never meant to proceed in the ship at all.

What was your reason for appearing to Mr. Easterby to intend to sail on the voyage?—It was for the purpose of getting a former account settled.

Did you proceed from the Thames as supercargo?—I went from Gravesend.

It became necessary, I suppose, in that character, that you should be apprised of the value of the cargo?—Only from the invoices; I had the invoices.

Who delivered the invoices to you?—Mr. Easterby.

What is become of those invoices?—I delivered them to Mr. Easterby, at Deal.

Mr. Garrow.—We have given notice to the prisoner Easterby, to produce those papers; your lordship will give me leave to prove that fact, in order that I may examine to their contents.

Mr. Thomas Bennett sworn.—Examined by Mr. Garrow.

Did you serve this notice on Saturday last in the forenoon upon each of the prisoners personally?—I did.

[*The notice was read.*]

"MR. GEORGE EASTERBY, MR. WILLIAM MACFARLANE, MR. WILLIAM CODLING, MR. JOHN REID.

"You are hereby jointly and severally required to produce, on the trial of an indictment against you, at the next admiralty sessions, to be holden at Justice Hall, in the Old Bailey, all bills of lading of goods shipped, or stated to be shipped on board the brig Adventure, of which you William Codling were lately master; and of all goods shipped, or stated to be shipped on board the ship William,

"whereof William Smith is master for her present voyage to the West Indies, and all invoices and bills of parcels of the aforesaid goods, and every of them, as well the invoices or bills of parcels, containing the just and true prices of such goods, as the invoices or bills of parcels containing greater prices than the just and true prices thereof; also all policies of insurance effected by you, or any of you, or by the directions, or on account of you, or any of you. on the said brig Adventure and her cargo, or either of them, or any part thereof; and all letters received by you, or any of you, from, and copies of all letters written by you, or any of you, to any person or persons whomsoever, containing any orders for, or information respecting the said insurances, or otherwise relating thereto: also all other papers, deeds, books, or writings, in your, or any of your custody or power, in any wise relating to the said brig Adventure or her cargo, or to the insurances effected thereon, or to the said ship William or her cargo. Dated this 22d day of October, 1802.

"Crowder and Larie, Solicitors
"for the Prosecution.

Mr. Edward Storrow's examination proceeds.

Mr. Garrow.—What was the amount of the invoices delivered to you?—I did not pay particular attention to it; but the invoices in my possession were about nine thousand pounds.

That was of the goods that had been shipped previous to your arrival at Yarmouth?—I cannot say whether it might not contain the tobacco and linens. I believe it did.

You proceeded then as supercargo to Yarmouth?—Yes.

I do not know whether you happen to know of your own knowledge, whether there were any articles of consequence contained in the invoices that were not in fact on board?—I cannot pretend to say that.

Did any thing happen at Yarmouth to alter your situation?—I wrote to Mr. Easterby from Yarmouth, that I did not mean to proceed in the ship.

When did you see Mr. Easterby next?—I went to the Downs with the ship.

After you had arrived in the Downs, did you see Mr. Easterby?—Yes, at Deal.

And there you finally quitted the ship?—I did.

Do you know, of your own knowledge, who succeeded you?—Mr. Reid, as was represented to me.

Did you see Easterby at all on board the ship?—Never, from leaving London. Mr. Easterby and Mr. Macfarlane went off in a

boat, after the ship was under way at London.

You delivered up your documents, at Deal, to Easterby?—I delivered up all the invoices, at Deal, to Easterby.

We have had two lads examined here: they were apprentices of yours, we understand?—Yes.

Are you acquainted with the hand-writing of Codling?—I have seen him write. I do not know whether I can swear to his hand-writing or not.

No person is asked to swear to the hand-writing of another, but as to his belief. Do you believe that to be his writing?—I believe it may, from the appearance of it.

If you had received such a letter of business, should you have believed it came from Codling?—I should, from what I have seen him write.

Lord Ellenborough.—Have you had letters from Codling?—No; but I have seen him write in the log-book.

Mr. Garrow.—So as to be acquainted with his hand-writing?—Yes.

Mr. Garrow.—This is the intercepted letter from Codling to Easterby, which I mentioned.

Mr. John Blackett sworn.—Examined by Mr. Garrow.

Are you acquainted with the character of the hand-writing of Mr. Macfarlane? did you ever see him write?—I do not know that I ever did. My son, I believe, has.

Mr. John Blackett, Junior, sworn.—Examined by Mr. Garrow.

Are you acquainted with Mr. Macfarlane's hand-writing? have you seen him write?—I have.

Look at that. Do you, from your knowledge of his manner of hand-writing, believe that to be his signature?—I am not sure.

Do you believe it to be his writing?—I am not sure.

I ask you, from your acquaintance with his character of writing, do you believe it to be his writing? If you had received an order in that hand-writing, as a broker, should you have done business for him?—Yes.

Mr. John Blackett, Junior, cross-examined by Mr. Sergeant Best.

You have seen him write?—Yes.

How long ago?—The twenty-ninth of July last.

[It was read.]

"London, 27th July, 1802.

"We, William Macfarlane, and George Easterby, of London, being sole proprietors and owners of the brig Adventure, of which William Codling is at present master, and now in the Downs; as also of her cargo; we, therefore, in consideration of your proceeding in the

"said vessel to the Mediterranean, and there disposing of the said cargo, or such part thereof as you possibly can, we agree to allow you 200*l.* sterling, as also all necessary expences incurred thereon; and further out of, and as part of the said 200*l.* we agree to pay, from this date, 20*l.* sterling to Mrs. Reid, on our account, quarterly, as witness our hands,

"WILLIAM MACFARLANE.
"GEORGE EASTERBY."

Lord *Ellenborough*.—Are there stamps according to the value of the appointment?

Mr. *Garrow*.—We have paid the penalty, and had it stamped.

Mr. *Robert Douglas* sworn.—Examined by Mr. *Knowlys*.

Did you go down to Brighton, when the loss of this vessel, the *Adventure*, was heard off?—Yes; I got there on Tuesday, the tenth.

Did you see the *Adventure*?—I did.

Was she under water at that time?—Part of her mast only was above water.

How far was she from the shore when you saw her?—About two miles and a half, in seven fathom water.

Did you go to Mr. *Easterby* and Mr. *Macfarlane*?—I went on shore; I called on Mr. *Mitchell*, an attorney, for his advice; I met Mr. *Macfarlane*, Mr. *Easterby* and Mr. *Reid*, at the house of Mr. *Brooker*.

Did you communicate to them any reports you had heard about what had happened to the vessel?—I did not at that time.

Did you afterwards communicate to any of the prisoners the reports you had heard, respecting the loss of the vessel?—I do not recollect that I did.

What conversation did you hold with them, with respect to the vessel?—I produced an authority from the underwriters, to endeavour to save the vessel, and inquire how she was sunk; and at the same time said that it was necessary to detain the captain and the crew, in order that they might assist me in getting the vessel on shore, and in saving the vessel and cargo, as they might be of use to me.

Did you mention there were any other reasons why you wished the captain to be detained?—No other reason but that.

What passed between you then?—Mr. *Reid*, who was present at this time, took a watch out of his pocket, and said that it was part of the cargo which he offered to assign to me, saying, he had no right to it, as he understood I was come down to act on the part of the underwriters. Nothing particular passed afterwards. I came out of the house; I went off to the vessel with a gentleman of the name of *Smith*, and saw the situation she was lying in; at that time they were endeavouring to get her up.

Lord *Ellenborough*.—Who was endeavouring to get her up?—The boatmen under the direction of a Mr. *Smith*, a gentleman who lives at Brighton. I found that my interference with the vessel would answer no purpose; as all the boatmen were employed there, I allowed them to go on their own way. They brought the vessel ashore a few days afterwards. I remained at Brighton the remaining part of the day, and took notice what they were about with the vessel, but took no active part myself. The morning following (the Wednesday morning) I went to the place where the stages generally go out from Brighton, where I saw Mr. *Easterby*, Mr. *Macfarlane*, and *Reid* walking together; I soon afterwards joined them, and they informed me that captain *Codling* was going to London in the stage. I expressed my astonishment at their permitting him to go, after what had passed the day before. Mr. *Easterby* then said, that he would detain the captain, which he did, and sent one of the boys up, I believe, in his place.

Did you at that time communicate to *Easterby*, *Macfarlane*, or any of the party, any reports you had heard respecting the ship whether it was a fair loss or a foul one?—I do not recollect that I did. Mr. *Macfarlane* went up, I believe, in the same stage with the boy. We walked together down to the Old Ship; I, Mr. *Easterby*, and *Reid*; *Macfarlane* was then gone off in the stage. Mr. *Reid* said, he had a box with watches, and some time-pieces in his possession, and also a small bale of muslin, or something of that kind, he meant to give up to me. I met with captain *Codling* at the inn; I told him he was very wrong in attempting to leave Brighton till the fate of the vessel was known.

He said that he had no place to sleep in; that from his arrival in Brighton he had been obliged to lie on the floor; and Mr. *Easterby* observed, his staying at Brighton would be attended with considerable expense; I said I would willingly defray any expense attending captain *Codling's* remaining there; and with respect to a bed, if he could not get one in the inn he was then at, I would endeavour to get one at the White Horse, where I was.

That was, on the Wednesday, was it?—On the Wednesday morning.

Did any thing farther pass between you upon that occasion?—I believe not.

What did *Codling* say to your offer?—He said, very well; and I therefore understood him that he meant to remain.

At this time had the ship been got on shore?—She was in the way of being got to shore, but was not got to shore till Thursday morning.

How soon on Thursday morning did you go to the ship, after she was got on shore?—I was standing upon the beach when she was hauled on shore, at high water, on Thursday morning the 12th.

Did you go on board the ship when she was got on shore?—I did.

Did you see the hatches opened?—I saw the hole in the vessel when I went on board her, from the outside of the vessel.

Were you the first person that went into the cabin?—I was, as I was informed by the boatmen.

In what state did you find the cabin?—I found the lockers on the larboard side had been knocked down, and part of the ceiling torn up.

Did you discover any holes?—There was a hole that appeared to have been done by a rude instrument; which appeared to be about nine inches long and four or five broad, to the best of my recollection.

Do you mean a rude instrument as distinguished from a sharp instrument?—I do; that would break more than cut.

Upon what side of the ship was that large hole?—In the run on the larboard quarter.

Did you perceive any other hole in the ship?—Not till the day following; on the day following I perceived two auger-holes besides.

On what side of the ship were they?—They were also on the larboard side, near to the keel.

Were they sufficient to occasion the sinking the vessel?—Not the two auger-holes.

But was the hole made with the rude instrument sufficient with the others to have sunk the vessel?—No doubt of it.

Have you any doubt that this vessel was sunk by those means?—I have not the least doubt that she was.

Could you judge from the appearance whether this injury had been done from the inside or from without the vessel?—It appeared done within side, because the lockers were knocked down, and the ceiling torn up for the purpose of doing it.

Was the vessel lying on the side on which these holes were made, or the opposite side?—On the opposite side.

Could that have happened if it had been done externally?—The vessel never lay upon the side where the holes were, but upon the other; and from her being a sharp vessel, it appeared to me impossible it should have been done either by an anchor or by a rock.

Upon going on board did you discover any instruments?—I saw one auger; I do not recollect seeing any other; that was lying upon the cabin floor.

After having viewed this ship, did you see any of the prisoners?—I saw Mr. Easterby, and likewise Mr. Reid, after I had seen the condition of the ship.

Were they at Brighton at that time?—They were. I went the same day to Lewes, where they were examined before a magistrate.

Did you find Codling, or make any inquiry after him?—I mentioned to Easterby, that he had acted very imprudently to let Codling leave the place without my knowledge. I

learned, after I had seen the ship, that Codling was gone.

Was Reid by at the time you made that observation?—I do not recollect. Mr. Easterby said he thought there was no harm in it; he was only going to London, and meant to return the day following.

What happened on Friday?—On Friday morning Mr. Lavie came down from London; we went to the "Old Ship," where Mr. Easterby put up; we understood from the landlord he had left Brighton at twelve o'clock on the Thursday night.

Did you find Mr. Easterby?—We did not.

Was that before or after Easterby had been before the magistrate?—It was after.

On what day was he taken before the magistrate?—On Friday.

And Reid too?—Yes.

Then they were discharged?—Easterby was discharged; Reid was not, he was admitted upon bail.

When was it that you found Easterby had left the place?—I mistook; it was on Friday night that Easterby left Brighton.

Did you go to Mr. Easterby's lodging after he had left Brighton?—Yes.

Did you find any thing there?—We found some letters directed to Mr. Easterby.

Look at that letter. Is that one of the letters you found in Mr. Easterby's lodgings?—It is.

[The letter was read.]

"Sir;

"I arrived in London at a quarter before nine A. M. but shall not get any conveyance before to-morrow morning. I thought it most prudent to take the first conveyance to Colchester, which is twenty miles from Harwich. I leave London at half past one P. M. On my arrival there I shall inform you my proceedings. I hope I will succeed to save the packet or bye-boat, by your orders, or a collier. I shall forward my journey with dispatch. On my arrival I shall inform you. My respects to Mr. Reid, and conclude from our unfortunate business,

"WILLIAM CODLING.

"London, Aug. 12, 1802."

Addressed, "George Easterby, Esq. Old Ship, Brighton, Sussex."

The Examination of Mr. Robert Douglas proceeds.

Mr. Knowlins.—Before you left Brighton, did you inform Easterby or Reid of what you had observed respecting the ship?—I believe I did. I mentioned to Mr. Reid, that it appeared to me the Adventure had been sunk intentionally; and I believe to Mr. Easterby likewise.

Did either Easterby or Reid say any thing in reply to that observation?—They said, they made not the least doubt of it.

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After you had seen this letter, did you pursue Codling with intent to take him?—I went from Brighton to London, and directly down to Harwich.

Lord Ellenborough.—Did they say by whom they thought it had been destroyed?—No; only that they supposed so from the appearance of it. I went down to Harwich, I applied to the post-master there to see the names of the passengers who had gone in the packet. There was no name of Codling.

Mr. Knowlys.—Did you look after any other name?—No; I did not then know of any other name that he had assumed. The two packets were under way, going to the continent. I went to the magistrate and got the warrant backed, and pursued after the packet. I got on board of the first packet; I searched her, and found he was not there. Then I went on board the other packet, and found captain Codling in one of the bed places in the cabin.

Was he in bed?—Yes he was.

Were his clothes off?—His coat only was off; the rest of his clothes were on, I think.

By what name did you find him on board the packet?—Under no particular name, as there was no name of Codling among the passengers. There were two gentlemen in the cabin.

Did you learn from Codling under what name he had gone in the packet?—I did not.

Did you hear it stated in Codling's presence?—I did not.

But there was no such name as Codling?—There was not.

You laid hold of him and put him into custody?—I had two water-bailiffs with me; I desired them to secure him; and they brought him to London.

Mr. Robert Douglas cross-examined by Mr. Fielding.

When you came to Brighton, you saw the posture of this vessel, and where she was lying?—Yes.

From that moment you were in expectation of her being towed on shore, and waited to see what the event would be of searching her when she was on shore?—Yes.

She was towed on shore?—Yes.

Was she afterwards repaired?—She was carried to a small port some distance from Brighton.

From Brighton she was afterwards carried into Shoreham?—She was.

Mr. Robert Douglas cross-examined by Mr. Sergeant Bayley.

You say, Reid told you there were some watches and other things he meant to give up to you?—Yes.

I believe those watches were not in his custody at that time?—The watches and the box were at the tavern. He counted the watches out to me, and went with me to the Custom-house, where they were counted out.

They were in possession of Mr. Reid when I got there, along with the rest of his baggage.

Lying open?—Nailed up in a box.

Mr. Knowlys.—When you first saw her, what quantity of mast might be above water?—About three feet of the top mast.

Lord Ellenborough.—What sort of a box was that which contained the watches?—It was about a foot and a half long.

Lord Ellenborough.—Was it of a size that would go into a trunk?—Certainly.

Mr. Richard Brewer sworn.—Examined by Mr. Marryat.

I believe you are a shipwright at Shoreham?—Yes.

Did you superintend the fishing up this vessel, the *Adventure*, after she had been sunk off Brighton, and bringing her to shore?—Yes.

Upon getting her to the beach did you observe the water run out of her in any places?—Yes, in three places.

Were those three places above or below the water-mark?—Below the water-mark, the upper one fourteen inches below the water edge.

Where had they been made?—In the larboard after quarter, in the run.

Had you an opportunity of judging, from what you saw, whether the holes had been made from the outside or the inside of the ship?—From the inside. I strictly examined them.

From what circumstance are you able to form that judgment?—I know very well whether a hole is bored from the inside or from without?—I have been used to the business twenty-six or twenty-seven years.

Will any thing, in the edges of the perforation, enable you to tell?—There will ever be a difference; if we can see no other parts but the outside and inside we can tell, it always leaves a roughness on the outside if you bore from the inside.

Did you observe the ceiling or the lockers of the cabin?—I found the lockers were broke to tear up the ceiling at the bottom, so as to make the hole that was broke by a hand-spike or some blunt instrument; that hole measured eight inches and a half by two and a half.

What did the other two holes appear to be made with?—With an auger.

Did you find any augers on board the ship?—I found one, a three-quarter auger, and the others were, I understand, found in my absence.

Lord Ellenborough.—Did you examine that with the holes?—The holes are a little less, because when holes are bored in the water they swell so that you cannot put the auger in again.

Mr. Marryat.—Where do the holes that are made by the auger appear to you to be made from?—From the inside.

How could a man get at that place, to bore them?—By taking up the scuttle which is in the middle of the cabin floor. This is the auger I saw on the larboard side of the cabin [producing it].

There is no fixed handle, I believe, to it?—None. This is the piece of the ship, at the lower part, where the holes were bored [producing a piece of the ship which had two auger holes in it].

Have you the plank in which the hole was broke which was done with the rough instrument?—This is the piece [producing another piece of timber] in which the hole was made by a crow bar or some such thing; this was in the larboard run, above the auger holes.

Were those holes sufficient to sink the ship?—The two auger holes were not, but this hole was, if they had had fifty pumps; this hole being much larger outside than inside, proves that it could never have been occasioned by an outward blow.

When did you take these pieces out?—Some few days after I got her ashore in the harbour; we put soldiers on that side where the injury was, that nobody should go nigh it till we took a survey of it; she was unladen at Brighton beach, and we got all the cargo out, and she lies now at Shoreham.

Mr. Garrow.—So that she could have received no injury?—She received none.

Nor any pillage?—Not to any amount.

Mr. Richard Brewer cross-examined by Mr. Fielding.

You plugged her so as to enable her to be taken into Shoreham harbour?—Yes, but before she was plugged we took a survey of the holes.

Lord Ellenborough.—When was she plugged?—I was not there at the moment the holes were plugged, but I measured them with Mr. Brown.

Mr. Fielding.—She was enabled to swim into Shoreham harbour, and there she now lies?—She was able when we stopped the holes, then we enabled her to swim there.

You got her into Shoreham harbour, and she swims there now?—I do not know where she is.

How far is it from Brighton beach to the mouth of Shoreham harbour?—Three miles.

She is capable of being repaired and sent to sea again?—Yes, at a great deal of expense. If there were only a stem and a stern-post left, we could place every thing to her and send her to sea again.

Lord Ellenborough.—Until she had been plugged in that way, was she capable of being navigated as a vessel?—No.

Lord Ellenborough.—Was she destroyed for the purposes of navigation as a vessel till she was so plugged up?—She was.

Philip Marking sworn.—Examined by Mr. Knowles.

Are you book-keeper at the coach office at Brighton?—Yes.

Do you know the prisoners at the bar?—I know two of them.

Which of them?—Those two [pointing to Codling and Easterby].

Do you know either of the other two?—I cannot say.

Did Codling go by your coach to London?

—Yes; at ten o'clock in the evening of Wednesday the 11th of August.

Do you know who took a place for him?—I cannot recollect that. Seven shillings was paid towards it.

By what name is he entered in your way-bill?—The name of Peetato, I think it is.

Did any body come with him at the time he went?—Yes, there was a gentleman came with him, I think one of the other prisoners; Reid, I think, came with him.

About what time did he come to your office?—Nine o'clock, or thereabouts.

Did he inquire for any body then?—Either Mr. Reid or Mr. Easterby inquired for the captain: the captain was not there at that time.

What did they say upon his not being there?—One of them remained in the office, while the other went out and brought him.

Which of them returned with the captain?—I cannot say that.

Did one of those two return with the captain, whilst the other remained in the office?—Yes.

Did you make any observation upon their conduct or behaviour, when you told them the captain was not there?—No; the gentlemen that remained sat down on the seat.

When the other returned with the captain, the captain set off?—He got up outside the coach, and went off with it.

Richard Parry sworn.—Examined by Mr. Marryat.

I believe you are an officer belonging to the Thames police?—I am.

Had you a warrant given you to execute against the prisoner, Easterby?—I had.

When?—On Sunday, the 15th of August.

When did you receive it?—On the Saturday evening before.

Was Macfarlane in custody then?—I understood he was.

Upon your going to Easterby's for the purpose of apprehending him, what passed?—I went on the Sunday morning between four and five o'clock; I waited about there till I saw the appearance of somebody stirring in the house; I rang the bell, and asked if Mr. Easterby was in the way; I received an answer, that he was in the country.

Did you get access to him then?—I did not.

Did you remain there, or go away and call again?—I waited about till ten o'clock; but in the interim went several times. I then got a letter, went and desired to see Mr. Easterby, saying it was a letter of some importance, and I must see him, my answer was——

I do not ask your answer, did you get a sight of him then?—I did not; I went away, and at two o'clock, the same day, I went to Easterby's house with another officer, and Mr. Black, a gentleman, an attorney; we planted a number of our men with boats, at the back door, with intention to prevent any escape that way, and then intended to break the door open.

When you went at two o'clock, did you get admittance?—I did. Mr. Black went to the door; I kept away, because I was well known; the door was opened; after some discourse I went in, and in the second floor Mr. Easterby was, in a small room; I told him I had a warrant against him, and took him into custody.

Mr. William Balcombe Langridge sworn.—
Examined by Mr. Garrow.

Be so good as to look at this power of attorney; did you receive it from Mr. Reid, the prisoner?—I received that paper from Mr. Reid, on the 13th of August.

[It was read.]

"To all to whom these presents shall come, we, George Easterby, of Canada Wharf, Rotherhithe, in the county of Surry, ship-builder, and William Macfarlane, of Bethnal Green, Mile End, in the county of Middlesex, gentleman, send greeting:—Whereas, the said George Easterby and William Macfarlane, are now about to send or export certain goods and merchandize, in a ship or vessel, called the Adventure, from Great Britain, to the port of Leghorn, in the Mediterranean.

"Now, know ye, that we the said George Easterby and William Macfarlane, for divers good causes and considerations, us hereunto moving, made, ordained, constituted, and appointed, and by these presents do nominate, constitute, and appoint John Reid, of Portsea, in the county of Hants, master mariner (and now on board of the said ship, Adventure), and supercargo, our true and lawful attorney, for us, and in our names, places, and stead, and as our act and deed to take the conduct and management of the said goods, wares, and merchandise, to the said port of Leghorn, or elsewhere, in the Mediterranean, and then and there, to sell and dispose thereof for the most money and best price that he can get for the same, and on receipt of the monies for such cargo, goods, wares, and merchandise, to give and sign receipts and discharges for the same; and to remit the same to us the said George Easterby and William Macfarlane, in England, or to receive other goods, wares, and merchandise, in lieu thereof; and also for us, and in our names, or in the

"name of our said attorney, to take upon himself the sole navigation and management of the said ship, and, as occasion may be, to unship the present master, and appoint another, or others from time to time, in his or their stead, and also to make up, adjust and settle all accounts with such master or masters, in relation to the said ship Adventure, and to transact, manage, settle, and adjust all accounts relating thereto, between us and any persons in Leghorn, and elsewhere in the Mediterranean, becoming the purchasers of the said goods, wares, and merchandise; and on non-payment of the money herein before mentioned, or non-delivery or detention of the said goods, wares, merchandise, or of any part thereof for us, and in our names, or in the name of our said attorney, to commence and prosecute any action or suit, either at law, or in equity; and against any person or persons whomsoever, and on any account whatsoever, in relation thereto, as our said attorney shall think proper. And to proceed therein, or discontinue and become nonsuited, or otherwise howsoever. And to compound, agree, or submit to arbitration, from time to time, all or any disputes or differences which shall or may arise touching the matters aforesaid, or any other account, matter or thing whatsoever, which reference, or any award or awards to be made in pursuance thereof, shall be as valid and effectual as if we had submitted and agreed thereto, in our own proper persons. And generally for us, the said George Easterby and William Macfarlane, and in our place and stead, to manage all business concerns whatever, in relation to the said goods, wares, and merchandise; hereby giving and granting to the said John Reid, full power to do, execute and perform any act or acts matters or things whatsoever, needful and necessary to be done, touching or any wise concerning all and every the premises, in as full and ample a manner, to all intents and purposes, as we the said George Easterby and William Macfarlane, might or could do, if we were there present. And all and whatsoever our said attorney shall lawfully do, or cause to be done, in and about the premises, we do hereby agree to ratify, allow, and confirm.

(Signed) "WILLIAM MACFARLANE,
for himself and
GEORGE EASTERBY."

Lord Ellenborough.—This may be received in evidence, as a paper delivered by Easterby and Macfarlane to Reid, but not as a deed.

Mr. Sergeant Bayley.—At present there is no evidence that that instrument was ever executed by any one.

Lord Ellenborough.—If he were to make title under it, it would be a different thing, but it is a description of his office, found in his possession.

Mr. Garrow.—I see Mr. Elstob is an attesting witness, I will call him to prove the execution.

Mr. John Elstob sworn.—Examined by **Mr. Gibbs.**

You are a subscribing witness to that instrument?—I am.

I see it purports to be executed by Mr. Macfarlane, for himself and Mr. Easterby?—It is.

Did you see Mr. Macfarlane execute it?—I did.

You prepared it I take for granted?—It was prepared in my office.

By whose direction did you prepare it?—I am not certain; I think by Mr. Macfarlane's.

Whose attorney have you generally been?—I do not think Mr. Easterby was in town.

Who gave you instructions for drawing it?—I cannot positively say, but to the best of my recollection, I took the instructions from Mr. Macfarlane; if Mr. Easterby had been in town he would have executed likewise.

You were attorney for them both?—In relation to this, I was; to the best of my recollection, the instructions I took from Mr. Macfarlane.

Lord Ellenborough.—It is a description of an office, which he assumes the exercise of.

Mr. William Balcombe Langridge cross-examined by **Mr. Gurney.**

You are, I think, an attorney at Lewes?—I am.

You are clerk to the magistrates sitting at Lewes?—I am.

You saw Mr. Reid immediately upon his being brought from Brighton, to be examined before those magistrates?—He was brought to Lewes on the thirteenth of August.

And then you saw him?—Yes, and then I saw him: I never saw him before.

You have stated that he put into your hands the power of attorney which you have produced, and the appointment of him as supercargo?—I have.

He put them into your hands with great readiness?—He did: it was before the magistrate.

At the time he was accused and was in custody?—Yes.

Could any man act with more openness and readiness than Mr. Reid did, in putting this paper into your hands, and in all his conduct?—Certainly he acted with great readiness.

Upon his examination before the magistrate, I believe he was discharged?—He was discharged, but under a recognizance to an-

swer any charge that might be exhibited against him.

He was discharged upon his own recognizance?—Upon the recognizance of himself and Mr. Easterby.

After he was discharged, did he remain at Lewes or at Brighton?—He remained at Lewes.

How long did he continue to remain at Lewes?—From the thirteenth to the twenty-second. On the twenty-second I received, by the post, a warrant, signed by Sir John Kame.

And upon that, he was again taken into custody?—He was.

But, during these nine days, he continued to reside at Lewes?—He did.

You knew where he was the whole of that time, and frequently saw him?—I did.

Did he not desire himself, that all letters which should come to him might be taken first and opened by you?—He did.

Did he not inform you of a trunk he had sent from Deal to London?—He did.

Mr. Garrow.—What he said cannot be evidence; but I shall not object to it.

Mr. Gurney.—He informed you of a trunk, which he had sent from Deal to London, and desired you to inform Mr. Lavie of it, that he might go and see what that trunk contained?—I had previously informed Mr. Lavie of its being at the King's Head; from Mr. Reid's information, he hoped, he said, it might be searched, to prove his innocence.

Did he, besides that, give you any letter for Mr. Lavie to give to his wife, to deliver up all letters, and every thing he had written?—I do not recollect that.

Mr. Garrow.—You have told Mr. Gurney that he very readily gave you up this paper. Was he in custody at that time?—He was.

Mr. John Blackett, senior, called again.—Examined by **Mr. Gibbs.**

You are an insurance broker, I believe?—Yes.

Were you at any time employed to effect any insurance for Easterby and Macfarlane?—I was.

When was the application made to you?—The first application was made on the 22nd of June.

To what amount were you desired to procure an insurance?—Then to the amount of one thousand pounds.

Upon what?—Upon goods on board the Adventure, captain Codling, for Yarmouth, Gibraltar, and Leghorn.

Who applied to you?—Mr. Easterby.

Did you effect so much of the insurance before any farther application was made to you?—It was upon a policy, a slip, to the amount of one thousand pounds, on the 22nd of June; that was on a verbal order. On the 28th of June I received an order, in writing, to effect an insurance for three thousand five hundred pounds, on goods.

Have you that order?—This is the order: “Mr. Blackett, Sir,—You will please to insure for me 3,500*l.*, on the Adventure, “Codling, and place the same to my account. “Your’s, G. E.”

Had you afterwards any farther directions?—About the same time, I was desired to make an insurance upon the ship.

Was that in writing, or by word of mouth?—By word of mouth, from Mr. Easterby.

How much were you desired to insure on the ship?—Seven hundred pounds.

What date was that?—I think it was the same day as the last order; but as it was at a different premium, it was not in the order.

Were you afterwards applied to, to effect any farther insurance?—I was, on the 22nd of July, by Mr. Easterby. The Adventure was then at Yarmouth.

How much did he then desire you to add?—Six hundred and fifty pounds.

Had you procured insurance for the three sums before ordered to be effected?—Not quite, nearly so, when this order for six hundred and fifty pounds was added. I think Mr. Easterby said, I had better stop till he could make up the account of the cargo, to see what deficiency of insurance there would be; and when the vessel was at Yarmouth, he gave me the order for six hundred and fifty pounds more, on the 22nd of July. He said, he was that sum short insured.

Did you effect the farther sum of six hundred and fifty pounds?—It was effected.

Lord *Ellenborough*.—And the antecedent orders?—Not quite. I effected four thousand five hundred and fifty pounds, out of five thousand eight hundred and fifty pounds.

Lord *Ellenborough*.—Was that all that you effected?—While Mr. Easterby was out of town, I think at Deal, Mr. Macfarlane gave farther orders, in writing, on the 29th of July, which I have. That order was received by my son.

Mr. *Gibbs* (to Mr. Blackett, jun.)—Did you receive that order from Mr. Macfarlane?—I did, and delivered it to my father.

[It was read.]

“Mr. Blackett; 29th July, 1809.

“Please to insure for my account 750*l.*

“on goods, per Adventure, Codling, and

“250*l.* on commission, which will oblige

“Your’s, W. M.”

Mr. *Blackett*, senior’s, examination proceeds.

Lord *Ellenborough*.—Whose commission was this?—The supercargo’s commission.

Mr. *Gibbs*.—Had you any farther directions for any other insurance?—I had not.

The sums which you had directions to insure were one thousand pounds, three thousand five hundred pounds, seven hundred pounds, six hundred and fifty pounds, and the last that you had from Macfarlane?—Yes; and I had directions for one hundred pounds more, from Mr. Easterby, on the captain’s goods or wearing apparel.

Have you got the policies that you effected?—I have.

Lord *Ellenborough*.—Had you any communication with captain Codling about this insurance?—I never saw the captain, to my knowledge, till I saw him at Brighton.

Mr. *Gibbs*.—It is usual for the owners to direct insurance for the captains, I believe?—Frequently.

Whom did you charge the premiums to?—To Mr. Easterby. I kept all of them, except what Macfarlane gave the orders for. I should have charged them both, because I understood from both, that it was a joint concern.

Lord *Ellenborough*.—Though you had received separate orders, you understood from Easterby and Macfarlane, it was the joint concern of both?—Yes, the ship and the cargo.

Mr. *John Blackett*, senior, cross-examined by Mr. *Sergeant Best*.

Whom did you consider as giving the orders?—Easterby.

Then all that you charged to Macfarlane was the seven hundred and fifty pounds, and two hundred and fifty pounds, the sums he mentioned?—Yes, as giving the orders.

Mr. *Gibbs*.—But you understood from them that it was a joint concern?—Yes; the policies were delivered to Mr. Easterby.

Mr. *Sergeant Best*.—Then they were not delivered to Macfarlane?—He was not there at the time.

Then he never saw the parties?—I cannot speak to that time; he was there when they were returned; the policies were returned to me after they had been in the possession of Mr. Easterby for some time.

Mr. *John Blackett*, senior, re-examined by Mr. *Gibbs*.

All the policies were returned to you?—All that they had.

Who brought them back to you?—Easterby and Macfarlane were together; there was one before. Mr. Easterby thought it was made upon the ship in mistake. I cleared that point up, by showing to him, that in the policy it was mentioned two per cent; now the ship was three per cent.

All the rest were brought back by Easterby and Macfarlane together?—Yes.

For what purpose?—I had some doubt with respect to the premiums. I had accepted a bill; and I would not engage for the outward freight until—

You were not satisfied about your security for the premiums?—I was not. I stated that first to Easterby, and then to both of them.

You added, I think, that you refused to engage for the outward freight until—what?—Till they paid the balance of the William. There was a bill of two hundred and ten pounds, that I had for the outward-bound freight of the William; and I would not deliver the bill up, till they lodged all these policies in my hands as a security.

Lord *Ellenborough*.—You refused to make the advance, unless they would give you security?—Yes.

Mr. *Gibbs*.—It was the joint account of Easterby and Macfarlane?—They were together.

Lord *Ellenborough*.—You had money to pay on account of freight?—Two hundred and ten pounds for freight on the William's account.

Mr. *Gibbs*.—Easterby and Macfarlane brought them to you together?—Yes, excepting one.

You stated to both of them, that you would not do that which they required unless you had a security?—I did.

And this security they jointly gave?—They asked me what I would have. I told them, if they would give me the policies up, and give me an order to receive the William's freight when she returned, I would do it.

[The policies put into court.]

Mr. *John Blackett*, jun. called again.—Examined by Mr. *Knowlys*.

Did you receive an order to have this policy effected; and from whom did you receive it?—I received it from my father, and got it done.

Did you see it underwritten by the several insurers?—I did; I saw them all underwrite it.

[It was read.]

"London to Yarmouth, Gibraltar, Barcelona, and Leghorn, ship or vessel called Adventure, for this present voyage, Codling. On ship, valued 750*l*."

[Then follow the names of the several underwriters.]

Did you, after this, receive any orders either from Easterby or Macfarlane, or both of them, to effect any other insurance?—I received an order from my father, on the 22nd of July, to insure seven hundred and fifty pounds more upon goods.

Did you afterwards see either of the defendants, Easterby or Macfarlane, and receive any farther orders?—On the 29th of July I received an order from Macfarlane for seven hundred and fifty pounds on goods, and two hundred and fifty pounds on commission.

Lord *Ellenborough*.—These are what we had before?—While I was in the subscription room at Lloyd's coffee-house getting the above insurance done, on the same day Mr. Macfarlane came to the lobby and desired me to get five hundred and fifty pounds more insured upon goods, telling me he could not wait to sign an order for it.

Did you get a policy effected for that five hundred and fifty pounds?—No.

How happened that?—Shortly after my father came to the coffee-house and prevented my effecting it.

Did you receive any farther order?—No.

Mr. *John Blackett*, senior, called again.—Examined by Mr. *Gibbs*.

Did any thing operate on your mind to prevent you from suffering the insurance to be farther carried on?—Yes, in my own idea.

What was it?—The vessel being in the Downs.

Mr. *Erskine*.—We cannot have the operations of this gentleman's mind.

Mr. *Garrow*.—We only desire to know whether something did not operate upon his mind to prevent his effecting any farther insurances?—Something did.

Lord *Ellenborough*.—Something induced you not to go on with any farther insurances?—Yes.

Mr. *John Blackett*, senior, cross-examined by Mr. *Harrison*.

When Mr. Easterby came from Deal, did you not receive directions from him not to insure any farther?—I did.

Mr. *Gibbs*.—Was not that after you had refused to make any farther insurances?—It was: then Mr. Easterby said that Mr. Macfarlane acted wrong in ordering any more. I desired my son to write a note to Macfarlane that I could get no farther insurance done.

Mr. *Gibbs* (to Mr. Blackett, junior).—Did you write that note to Macfarlane?—I did.

Lord *Ellenborough*.—What distance of time was there between your sending the letter to Macfarlane, and your stopping the insurance?—The same day I stopped the insurance I ordered the letter to be written to him.

Mr. *Harrison*.—How long was it afterward, before Mr. Easterby called upon you?—About three days afterwards.

Mr. *John Walker Hart* sworn.—Examined by Mr. *Marryat*.

Are you an insurance broker?—Yes, I am.

Did you receive any orders for effecting insurances upon the Adventure, Codling?—I did.

From whom did you receive these orders?—From Mr. Easterby.

Did you receive any other orders from any other person?—And from Mr. Macfarlane; they jointly gave me the order.

At what time did you receive those orders?

—The 13th of June; this is the order;

"George Easterby on the Adventure, William Codling, London, Yarmouth, and Leghorn, to touch at Gibraltar and Barcelona,

"4,000*l*. goods."

Did you effect an insurance, agreeable to that order, to the amount of four thousand pounds?—I did.

How long were you in effecting it?—Four or five days.

Did you communicate to Easterby and Macfarlane the progress you were making?—Yes, with both of them repeatedly; they wanted me to effect eight or ten thousand pounds: I told them I could not effect so much.

Who wanted you to effect eight or ten thousand pounds?—Mr. Easterby.

Was Mr. Macfarlane present at that time?—I do not recollect that he was.

Did you ever learn from Easterby or Macfarlane who were interested in this Adventure?—They both told me it was a joint concern, both ship and cargo.

Was any representation made to you by Easterby of any particular articles of value that were on board?—Yes, I questioned him about the sort of goods. I said that as she was so small a vessel the goods must be very valuable to make it amount to so large a sum; he said they were chiefly plated goods and silver, woollens and linens, which are very valuable, and lie in a small compass.

What is the size of the ship?—Between seventy and eighty tons.

Mr. John Walker Hart cross-examined by Mr. Harrison.

He told you these amounted to eight thousand pounds, and you effected four thousand pounds?—Yes.

I believe you were told by Easterby, that Mr. Blackett was effecting an insurance for four thousand pounds, and you must let him know how you were going on?—Yes.

Lord Ellenborough.—Your authority to effect an insurance to the amount of four thousand pounds was never countermanded?—No.

Lord Ellenborough.—Nor your having effected it disapproved of?—No.

Mr. Murray.—Did you deliver the policy after having effected it?—I did, to Mr. Easterby.

Mr. Henry Brooker sworn.—Examined by Mr. Garrow.

You are an attorney at Brighthelmstone, and act as a notary public there?—I do.

Upon the loss of the ship Adventure were you applied to, to prepare a protest?—I was.

Who were the persons that came to you upon that occasion?—Captain Codling, the supercargo Mr. Reid, and the mate Cooper; they came together.

Did either of those persons deliver to you papers which imported to be bills of lading?—They did not deliver them to me.

Mr. John Colbatch sworn.—Examined by Mr. Garrow.

You are clerk to Mr. Brooker?—I am.

Do you remember these persons coming to him to prepare a protest?—I saw Mr. Codling.

Did you receive from him any bills of lading?—I asked him if he had any.

Did you receive any from him?—Yes.

Did you, for the purpose of the protest, insert the particulars in the draught of it?—I did.

What did you afterwards do with those papers which were delivered to you?—I took them into Mr. Brooker's office.

Did you insert the short heads of those

bills of lading in the draught of the protest correctly?—I did.

Did you compare the original papers with your draught of the protest?—I did, and afterwards carried them into Mr. Brooker's office.

I believe Mr. Brooker struck out that part of the protest, not conceiving it to be necessary?—He did.

Mr. Henry Brooker's examination proceeds.

Mr. Garrow.—Upon Mr. Colbatch's having prepared the draught of the protest, did he deliver it to you with these bills of lading?—He did.

You thought it unnecessary to insert the enumeration of the bills of lading?—I did.

What did you do with them?—They remained in my office till the settling of the protest; Mr. Easterby and Mr. Macfarlane were both present at the finishing the protest; they were taken away by the persons present.

Which of the persons you have named took away these bills of lading?—I cannot speak positively; I rather think Mr. Easterby.

Have you any doubt about it?—I have no doubt about it.

Mr. Garrow.—The bills of lading are among the papers which we gave the prisoners notice to produce.

Mr. John Colbatch's examination proceeds.

Mr. Garrow.—Is that a faithful enumeration of the bills of lading delivered to you by Codling?—It is.

Lord Ellenborough.—I see there is supposed to be one bill of lading missing; was any account given you of the contents of the bill of lading missing, or any account of the value of the articles?—No; it was an idea I entertained myself, that there might be something missing.

Lord Ellenborough.—They did not state that there was a farther bill of lading, the contents of which ought to be inserted, in order to make up the total of the cargo?—No.

Lord Ellenborough.—It was merely a supposition of your own?—Yes; I intimated to Mr. Codling, that possibly there might be some; he suggested there might possibly be some one lost; and upon that I put it in that way.

Mr. Thomas Whitmore sworn.—Examined by Mr. Gibbs.

Is it your business to make out the cockets?—No.

What is your office?—I merely identify that these [producing them] are the original cockets.

Mr. Henry Reid sworn.—Examined by Mr. Gibbs.

Have you the manifest of the Adventure's cargo?—I have.

You are an officer in the Searcher's Office?
—Yes; I bring this from the Searcher's Office.

Mr. Charles Flowerdew sworn.—Examined
by Mr. Gibbs.

Were you employed, at any time, by Easterby or Macfarlane, to make out a manifest of the ship Adventure?—I was.

By one or both of them?—I received the particulars from Mr. Easterby.

Was Mr. Macfarlane present?—I do not think he was when I delivered it to Mr. Easterby.

These are the cockets?—I see five of them are endorsed by me.

By whose orders?—By Mr. Easterby's. Is that the manifest which was made out by you by Mr. Easterby's direction?—It is.

Did you see Mr. Macfarlane in the course of making out the manifest or the cockets?—Several times.

Did he furnish you with any materials for making them out?—Once Mr. Macfarlane gave me directions to pass an entry in his name. I generally made them in the name of Mr. Easterby.

Mr. Charles Flowerdew cross-examined by
Mr. Knapp.

Then we are to understand, that with respect to the manifest and the cockets, no one gave you directions excepting Mr. Easterby?—In one entry Mr. Macfarlane gave me directions: but for what goods I cannot now recollect.

Then I understand that, with the exception of one entry, the only person that gave you any directions, either with respect to the manifest or the cockets, was Easterby?—It was so.

The one entry which forms the exception, you say was with respect to goods; but what goods you do not know?—I do not.

Mr. Garrow.—Nor whether it was with respect to the ship Adventure?—I do not know for what ship.

Lord Ellenborough.—This is the manifest you made out from the directions of Mr. Easterby?—Yes, and indeed from a copy of his.

Mr. William Gates sworn.—Examined by
Mr. Gibbs.

You are one of the principal officers in the customs at Brighton?—Yes.

Do you remember the time when the Adventure was cast away there?—Yes.

You remember her being afterwards brought ashore?—Yes.

Was any entry made in the customs of the goods supposed to be on board that vessel?—When there was a possibility of the ship being got on shore, the captain made his report, which is the usual custom, at the office.

Do you remember Mr. Easterby or Mr. Macfarlane being there?—I remember Mr. Easterby being there.

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You did not see Mr. Macfarlane?—I think I did not see him at the office; I might see him at Brighton.

Did Easterby come with Codling to you?—Easterby came with Codling, upon the second application.

What was the purpose of his coming?—In order that a report might be made. Easterby came on the 11th, to expedite the report that evening, that the captain might go away that night.

Was the report made?—Yes.

From whom did you receive directions for making the report, and as to what was to be inserted in it?—What I inserted in the report I copied from the cockets.

Who gave you those cockets?—The captain. Then these were the cockets which were delivered to you from which you made up the report?—Yes, they are.

Mr. Easterby was present then?—He was. I believe you swear the captain to the report, do not you?—Yes.

This is exactly a copy of the manifest in town, and Mr. Codling was sworn to it?—Yes.

Mr. Garrow (to Mr. Edward Storrow).—Look at that signature to the London manifest—William Codling. Do you believe that to be the prisoner Codling's hand-writing?—I believe it is.

Mr. Thomas Tasker, sworn.—Examined by
Mr. Knowlton.

I believe you were one of the salvers of this vessel?—I was.

Were you present when the hatches of the vessel were first opened, after it was got on shore?—Yes.

Did you take an account of the cargo that was found within the vessel, when she was brought ashore?—I did.

Have you that account with you?—I have.

Did you find in the cargo six cases of silver plate?—No, none.

Did you find four casks of earthen ware?—There were only two on board.

Did you find four boxes of china?—No, none whatever.

Did you find eleven bales of short and long cloth?—There were only five.

Did you find one case of cutlery and four fowling pieces?—There were only two fowling pieces. There was a case containing some files and saws.

Did you find a case of ironmongery, and four daggers?—There were four daggers and one hanger contained in the same package as the fowling pieces.

Was there any distinct case of ironmongery?—No distinct case that I know of.

Was there a case of cutlery, with eight pair of pistols and gilt toys?—There was only one pair of pistols, in the same case as the daggers and fowling pieces, and there was a case of pistols singly by themselves; there were only two pairs of pistols.

Did you find two cases of hats?—There were no cases of hats.

A box of brushes?—Yes, there was a box of brushes.

Were there a hundred bottles of painters oil?—There were fifty-eight bottles of painters oil.

Were there six cases of pickles?—There were no cases of pickles.

Was there one grand piano forte?—There was a broken piano-forte.

What was the maker's name of the piano-forte you found there?—Ganer.

You found no other piano-forte?—No; only one.

Did you find two cases containing two organs?—I did not.

Did you show all the articles that were found on board to Mr. Myers?—There were two kegs in the vaults where the tobacco is deposited; it would have been a great deal of trouble to get at them; but, the day before the sale, with great difficulty, we did get them out: they were two casks of tripe.

What should you judge to be the highest value of those two casks which Mr. Myers did not see?—They have been sold since; they contained about a quarter of a hundred of tripe; and sold only for fifteen shillings.

Mr. William Myers sworn.—Examined by Mr. Knowlys.

I believe you are a broker?—Yes.

Did you see the cargo which was recovered from the ship *Adventure*, at Brighton?—I did.

What was the value of that cargo?—My instructions were, to estimate the original cost, as between seller and shipper; I valued the original cost at three thousand two hundred and thirty-one pounds one shilling and six-pence.

Lord *Ellenborough*.—Was that the full value of it as between seller and shipper?—I believe it was.

Mr. *Garrow*.—Your lordship observes, that Mr. Knowlys examined Mr. Tasker as to the articles which were found on board. We put in and proved the bills of lading produced by Colbatch. The same deficiencies will appear from those documents, signed by the captain, as appear from the manifest.

Mr. Andrew Munro sworn.—Examined by Mr. *Marryat*.

You are clerk to Mr. Davallon?—Yes.

Did Easterby give any order to Mr. Davallon for silver goods?—Yes.

What was the real price of them?—Two hundred and fifty pounds, odd.

Beside the silver goods, were any pistols, fowling-pieces, and articles of cutlery furnished by him?—Yes.

Are the whole included in the two hundred and fifty pounds?—No.

What was the total amount of the invoice?—Between seven and eight hundred pounds, exclusive of the silver.

Lord *Ellenborough*.—What did the whole amount to?—About one thousand one hundred and fifty pounds.

Mr. *Marryat*.—Is a drawback allowed upon the exportation of silver goods?—Yes.

Did you carry the silver goods on board the vessel?—Our lighterman did.

Did you go with him?—I did not.

What is the lighterman's name?—Joseph Turnley.

In how many packages were the silver goods originally put up?—In one package.

Was any alteration made afterwards, and upon what occasion?—By order of Mr. Easterby they were put into six packages. They were altered first into three, and those three into six. He ordered them into six, he said, because they would be more safe to stow into small lockers.

Did you ever see the articles on board yourself?—No, I did not.

Where did you leave them?—At the Custom-house quay.

To be examined there, for the purpose of obtaining the drawback?—Yes.

Look at those pistols and fowling-pieces, which are lying before you; are those what you furnished under this order?—I cannot be positive; we furnished articles of the same kind, manufactured by the same maker.

Look at the fowling-pieces; did you furnish such an article as that as part of the order?—Yes, several.

At what time of the year were they furnished?—In the month of November or December, in the last year.

Is this the cocket?—It is.

When were they shipped?—The 15th of June, on board the *Adventure*.

Were more invoices than one furnished with the goods?—Yes.

Did the prices in those different invoices correspond, or did they vary?—They varied.

What was the difference between the two?—Seven and a half per cent.

Do you mean that seven and a half per cent was added to each separate article?—Yes.

In no case more?—Very little difference, if any.

By whose direction was the second invoice made out, with the seven and a half per cent advance?—It was an agreement at the time of giving the order, that Mr. Easterby should have an allowance of seven and a half per cent to himself.

Lord *Ellenborough*.—Were they charged higher at the request of Mr. Easterby, than you otherwise should have charged them?—Certainly.

Mr. *Marryat*.—Were you to be paid at the enhanced or reduced invoice price?—At the reduced price.

Thomas Blagdon sworn.—Examined by Mr. Gibbs.

You are a waterman, I believe?—I am.

Did you ever go with Mr. Easterby on board the Adventure?—Yes; I went along with him often.

Have you ever been on board by night?—Yes, I have.

Did you ever bring away for Mr. Easterby any cases that were on board the Adventure?—Yes, twelve cases.

When was that?—I can hardly answer to the time, I have not any thing to fix the time.

Was it whilst the ship was in the river?—Whilst the vessel was loading and lying at Lime-house hole.

Do you remember six small square cases?—Yes; Mr. Easterby had them out by his own order, with me.

Mr. Gibbs (to Andrew Munro).—What shape were the cases in which you packed the plate?—Oblong.

(To Blagdon). What was the shape of the cases you brought on shore?—Six inches longer than they were broad.

Besides those were there any other cases that were carried away?—Yes; six lesser ones marked E. M. upon the top; signifying Easterby and Macfarlane, I suppose.

You brought them away at another time?—It was about two days afterwards, I think.

Was Mr. Easterby with you then?—Yes, he was.

Was it by day or by night?—One was in the morning, the other in the evening.

At what time in the morning?—About eight o'clock on a Summer's morning.

The first was in the evening, was it?—Yes; and the other at eight o'clock in the morning.

Where did you carry them to?—To Mr. Easterby's house. He took one of them under his arm, and bid me bring the rest out of the boat and he would send after them.

Did you ever while the ship was loading carry any ship's stores to Mr. Macfarlane's?—I have carried a whole heap of things to Mr. Macfarlane's house.

At one time, or more than one time?—At twice.

A boat's load each time?—Yes as much as ever it would hold, which is about equal to a ton each time.

You carried them in your boat?—I did, and Mr. Macfarlane and his son were with me.

Was Codling on board when these things were taken out?—The things which were carried to Mr. Macfarlane's, were not taken out of the vessel, but out of Easterby's warehouse: the cheeses were all open.

Mr. William Rolfe sworn.—Examined by Mr. Garraw.

You are a musical instrument maker, in Cheapside?—I am.

Were you applied to in the month of May, by any person now here, to furnish him with musical instruments for exportation.—Yes, by Mr. Easterby, on the 11th of May, I be-

lieve; he first made application to me, some few days before, for a piano forte, for the use of his daughter; he came and altered his mind, and instead of the one he first made choice of, he ordered a grand one for the use of his daughter.

Did he order any for exportation?—He brought with him, at the same time, Mr. Macfarlane; who wanted some musical instruments, of different descriptions, for exportation; they consisted of a small table organ, of some violins, some flutes, printed music, strings, and a very large elegant organ. Mr. Macfarlane told me they were to be shipped, but on what vessel I knew not. On the 19th of June I delivered the things Mr. Macfarlane ordered, at his house on Bethnal Green, according to his order.

How were they packed when you delivered them?—They were unpacked, except the small organ, which was packed in a case, with the top loose; the violins, flutes, music, and strings, were packed in another case, ready for exportation. The large elegant organ was sent, and a packing case was made, but it was not packed in the case; there was a second-hand piano forte, which was repaired for Mr. Easterby, which was delivered at the same time.

What was the maker's name?—Ganer; that was delivered at Mr. Easterby's house, on the 11th of March, with the grand piano forte, for the use of his daughter.

Was the small one delivered packed?—The small one was packed up ready to ship.

Did you see Mr. Easterby upon the subject of the large one?—Yes.

What passed?—The last time I saw him, he came and ordered me to make out a bill of parcels, in the joint names of Easterby and Macfarlane, for the purpose of giving to the supercargo.

Did any thing pass, about what was to be included in the bill of parcels?—The whole of the instruments that were sent to each of their houses.

Was that great piano forte to be included?—It was; he then told me that he should ship the grand piano forte with the rest, for which his own workmen should make the packing case.

Had you proposed to make a packing case for it, for exportation?—I had, and he said his own workmen should do that. I sent him down the size of the case, and offered to pack it when it should be ready to ship.

Were you ever called upon to pack it for exportation?—Never.

Have you seen those instruments, you so furnished, since you sent them out of your possession?—I have; on the 23rd of August I was applied to by Mr. Lavie, to go down that evening, at eight o'clock, to remove an organ, found in the house of Mr. Macfarlane.

Did you go to Macfarlane's house?—I did.

Did you there find the organ that you had furnished for exportation?—I did.

Is that what you call the elegant organ?—It is.

Where have you seen the rest of the articles?—The day following I was requested to go to Mr. Easterby's; in his parlour I found the grand piano forte.

Which he told you was to be included in the bill of parcels, and to be exported?—Certainly.

Did you find any thing else?—I have since seen a box or case, containing the violins, flutes, strings and music.

Were they in the state in which you had sent them for exportation?—They appeared to be the same, and were in the same case, I saw them at the police-office.

Did you see any where, any of the other articles you had furnished, besides those you have mentioned?—I did not.

Is this the bill of parcels you made out for those goods?—It is.

What is the amount of it?—One hundred and eighty-five pounds, seven shillings.

Is that the price at which you charge the articles, as between you and your customer?—Exactly.

Here is another bill of parcels of yours; what is the amount of that?—Two hundred and twenty-one pounds, ten shillings and sixpence.

Did you make that out after you had furnished the things?—I did.

By whose desire?—By the desire of Mr. Easterby and Mr. Macfarlane together.

Does that include the same articles as the first?—Exactly; line for line, but the prices are different.

Is that the one you mentioned before, that was to be given to the supercargo?—The large one was to be given to the supercargo, and the one at the real prices was for his own use.

Was it so explained to you?—It was.

Were they both together when the large one was ordered?—They were.

Lord *Ellenborough*.—Do you recollect the date when the large one was ordered?—I do not.

Mr. *Garrow*.—How long was it before you were called upon by Mr. Lavie to look at these instruments, that you were asked by Easterby and Macfarlane, to make a larger bill of parcels?—It might be about three or four days after the delivery of the goods and the first bill of parcels.

I suppose the first has its true date?—The 11th of May, and June the 19th.

Who showed you the case of instruments?—Mr. Perry.

Mr. *William Rolfe* cross-examined by
Mr. *Sergeant Best*.

On what day was it that you went to Macfarlane's?—On the 23rd of August.

He had been in custody then for more than a week, had not he?—I do not know, he was not at home, I did not find him.

Mr. *Garrow*.—Is not the organ a bulky

article, that could not be easily taken in and out of a dwelling house?—It is a bulky article.

What is the price you charged for the organ?—Sixty-five guineas.

Richard Perry called up again.—Examined by
Mr. *Gibbs*.

What did you find at Mr. Easterby's?—I found fourteen different packages, besides a grand piano forte.

What were the packages you found besides?—This gun is one, and this bundle, containing some pistols, and several other articles. I found a large plated urn, a stand to that urn plated, a pair of plated snuffer stands and snuffers.

Were those things packed?—They were put underneath a kind of dresser; I found a large trunk containing a number of articles and pieces of iron, some pieces of cloth containing a good many stockings of various sorts; some cutlery wares, some knives.

Lord *Ellenborough*.—You do not give them any identity?

Mr. *Gibbs*.—No, we cannot, because they have been taken out of the packages in which they were originally put, but the effect of the evidence is to prove, that things which would answer the description of those wanting from the cargo, were found in Easterby's house.

Lord *Ellenborough*.—I think, that having laid that foundation, it is, in some respects, some degree of evidence.

Mr. *Gibbs*.—What were there besides these?—A great variety of buttons and some pocket-books.

How many pocket-books?—Four, I think, and a great quantity of buttons.

Where there any gilt toys?—There is a quantity of China gilt.

Do you recollect any thing more?—Some razors.

Any musical instruments?—No, not there.

Have you the pocket-books?—Yes. [*the witness produced them.*]

(To *Andrew Munro*) Were there any pocket-books of that sort?—There were three dozen.

(To *Richard Perry*) Where did you get that case of musical instruments you showed to Mr. Rolfe?—I got it in the lodging of Mrs. Smith, in King David-street, in the parish of Shadwell.

Do you know who Mrs. Smith is?—She is sister to Mrs. Pattison; I believe the lodgings were taken in Mrs. Pattison's name.

Jane Smith sworn.—Examined by
Mr. *Knowlys*.

Are you sister to Mrs. Phillis Pattison?—Yes.

Where do you live?—In King David-lane, Ratcliff.

Do you recollect giving some keys to Mr. Perry, the officer?—Yes.

Were they the keys of the lodgings of your sister, Mrs. Pattison?—Yes.

She is a good deal at Mr. Macfarlane's house, I believe?—I believe she is.

You used to go there to her?—Sometimes, I did.

Were you there when Mr. Perry found these things?—Yes.

Who brought these things to the house?—My sister, Mrs. Phillis Pattison.

Was that before or after Mr. Macfarlane was taken up?—I did not know Mr. Macfarlane was in confinement when these things were put into my care.

How soon after the things were brought to your sister's lodgings, did you know that Mr. Macfarlane was in custody?—I cannot recollect; it was some time after I learned that Mr. Macfarlane was in custody.

Phillis Pattison sworn.—Examined by
Mr. Garrow.

How long have you been acquainted with Mr. Macfarlane?—Five years.

Were you at his house when he was apprehended?—Yes.

I believe you were frequently and much at his house?—Yes, I was a close neighbour to him, I live near him.

And pass much of your time at his house?—No, I did not, I frequently called at his house; I was sometimes at his house.

And he sometimes at yours?—He called on me sometimes.

After he was taken into custody, we have heard that you carried some goods to your lodgings, which were afterwards found there by Mr. Perry; where did you take those goods from?—From Mr. Macfarlane's house.

By whose desire and directions did you carry them to your lodgings?—Nobody's, I took them of my own accord, I was not desired by any body.

Have the goodness to recollect you have been already examined, and my questions are suggested by what you have already sworn; what observation had Macfarlane made to you respecting those goods which induced you to carry them from his house to yours?—He had made none respecting those goods.

What induced you to carry those goods from Macfarlane's to your house?—I took them away on account of only a servant maid being in the house, I thought them not quite secure, besides which, I was afraid of a bankruptcy, and thought it right to secure what I could.

What sort of goods did you carry away from his house, from a double apprehension of their not being safe, because there was only a maid in the house, and your fear of a bankruptcy?—Every thing I could conveniently move in a coach.

In what part of the house were they before you removed them?—In different parts.

What sort of goods were they?—I do not know what.

It is fit I should apprise you, that the magistrate before whom you were examined, is now in court, and that your original examination is likewise in court; how soon after Mr. Macfarlane was taken into custody, did you remove his goods into your house?—It was very shortly after.

How soon after?—The first night, or the night following.

Were you in his house when he was apprehended?—No, I was not; I was in my own house, I had called at his house that morning, and was going over with a lady and gentleman to my own house, and Mr. Macfarlane with us.

When, in fact he was apprehended?—It is not many yards from his house to mine.

In fact, when he was apprehended, he was in your company, going from his house to your's?—Yes.

What sort of goods did you remove from his house to your's?—Boxes chiefly.

How long had they been at Mr. Macfarlane's before you removed them?—That it is impossible for me to say.

Not impossible, because you were much there?—Not much.

Do you mean to swear you were not much there?—I was not always so much at his house as to know all his transactions.

You passed but little of your time there, peradventure?—As much as was convenient to me.

Upon your oath, had any conversation taken place between you and Macfarlane before you removed those goods; and, before you answer it, be so good as to look at that paper, look at your own signature?—I do not know any thing about it, Mr. Macfarlane did not order me to take them.

My question was, what observation Macfarlane had made to you about those goods, before you removed them?—He did not mention any thing about those goods.

Lord Ellenborough.—Did he about any goods?—He only expressed that he was uneasy about his furniture, and all on account of the house being left without a protector.

Then I take for granted that, as his alarm extended to the furniture, as well as to those goods, you removed all?—I would have removed all if I had had an opportunity.

But certain articles being packed in boxes, those you conveyed away?—They were most convenient.

Did you remove any goods after the first coach load?—Yes, twice.

Recently, after his commitment?—Yes.

Do you know what those goods were that in fact you removed?—I do not, indeed.

Have you never seen them since?—I saw them at the Police-office, and thought they were like what had been in my apartment.

You thought they were the right goods?—I thought they were; there was a trunk of my own, I was certain of.

Upon your oath, did not you accompany the goods in the coach from your house to the Police-office?—Yes, I did go.

Then the goods that you brought in a coach to your own house, and which you lodged there, in the presence of Mrs. Smith, were the same you brought from Mr. Macfarlane's?—They were the same I brought from Mr. Macfarlane's.

All of them?—Yes.

How were they secured after they got into your better place of custody, your own lodgings, how many locks were put upon the doors?—I ordered two locks to be put upon the door, because I was not at home at the time.

There was nobody there but your sister?—There was nobody there when the goods were put there.

So you had two locks put upon them?—I had.

Have you seen Mr. Macfarlane lately?—Yes, I have.

How lately?—To-day.

You have been with him frequently since he has been in custody?—As often as I thought it convenient and pleasant to myself.

Has it happened to be convenient and pleasant to do so daily?—I do not know that that is a proper question; I appeal to his lordship.

Lord Ellenborough.—There is nothing improper in the language.

Mr. Garrow.—Have you been with him daily?—Perhaps I have.

Have you been with him daily?—Yes, I have, every day.

Mr. Garrow.—I will now put in the notices of abandonment by Easterby and Macfarlane,

Mr. John Walker Hart, called up again.

Mr. Garrow.—Look at the signatures to those papers; are they the hand-writing of Easterby and Macfarlane?—I believe they are.

[The papers were read.]

"To all and every the underwriters on the cargo of the brig Adventure, of and belonging to the port of London.

"We, the undersigned, George Easterby, of Rotherhithe, in the county of Surry, merchant, and William Macfarlane, of Bethnal-Green, in the county of Middlesex, merchant, owners of the cargo of the brig Adventure, of and from Yarmouth to Leghorn, and sunk within a few miles of Brighthelmstone, in the county of Sussex, do hereby relinquish, abandon, and give up, unto you, the underwriters above-mentioned, all and every the cargo of the said brig Adventure, and all powers of possession and disposal of the same, we hereby relying on the policies of insur-

"ance, and claiming of you, and each, and every of you, under the same, all and every sum and sums of money for which the said cargo is insured, and which you have respectively underwritten on the same. Dated this 10th day of August, 1802.

"GEORGE EASTERBY,
"W. MACFARLANE."

"To all and every the underwriters of the brig Adventure, of and belonging to the port of London.

"I, William Macfarlane, of Bethnal Green, in the county of Middlesex, merchant, owner of the brig Adventure, of and belonging to the port of London, bound from London to Yarmouth, and from Yarmouth to Leghorn, and sunk within a few miles of Brighton, in the county of Sussex, do hereby relinquish, abandon, and give up, unto you the underwriters above-mentioned, the said brig Adventure, and all powers of possession and disposal of the same, I hereby relying on the policies of insurance, and claiming of you, and each, and every of you under the same, all and every sum and sums of money for which the said brig is insured, and which you have respectively underwritten on the same. Dated this tenth day of August, 1802.

"W. MACFARLANE."

DEFENCES OF THE PRISONERS.

Codling.—I leave my defence to my Counsel.

Mr. Fielding.—I think it right, at present, to address a few observations to your lordship upon the state of the case, in fact, as it now appears upon the evidence; and I shall, afterwards, trouble your lordship with a remark or two upon the law, as to how far this indictment squares with existing laws. Before I trouble your lordship with adverting to the case, as it stands proved, I would beg leave to call your lordship's attention to the statute itself, the policy of which is most obvious—it is designed for the protection of the commerce of the country, and the legislature has paid particular attention to the interest of the underwriters. All that is raised into an offence by this act of parliament, depends upon the subsequent part of the indictment, where it charges, that the party intended to prejudice the underwriters;—all the preceding circumstances of casting away, burning, or destroying the ship, only become criminal, under this act, when they have adjoined to them the intention of injury and prejudice to the underwriters; and, I take for granted, that no other definition will be given to the term, prejudice, in this act of parliament.—I submit, that the word *prejudice*, can have no other possible signification attached to it, than the

pecuniary damage sustained by the underwriters, when they pay money upon a policy; and, as I have said before, that there can be no offence under this act of parliament, unless an intention so to prejudice the underwriter, shall be made out by satisfactory evidence. As the matter strikes me at present, I have no conception there is any one substantive piece of evidence to this point, as the evidence applies to Codling, for whom only I am of counsel, and I have many other reasons derived from that consideration, for not meddling with any other part of the case, as the evidence may bear upon others. I shall call upon your lordships only to pay particular attention to the observation I am now offering, as it affects Codling; and I am bound to say here, that there is not an atom of proof that in any one stage of the business—

Lord *Ellenborough*.—I rather think, Mr. Fielding, that it is for the jury and me, whether there is an atom of proof;—this is an address upon the facts, instead of an argument upon the point of law.

Mr. *Fielding*.—I did not mean to say *proof*, I meant to say *evidence*.

Lord *Ellenborough*.—But a comment upon the effect of evidence is not admissible.

Mr. *Fielding*.—If the evidence, considered all together, does not amount to that which is a necessary ingredient to constitute the crime, it has always been allowed to counsel to take notice of that as a defect of the proof; of which if your lordship is satisfied, there is nothing to go to the jury.

Lord *Ellenborough*.—You say there is a defect of proof, and that the attention of the judge should be called to it—that if it is not made out, that there was an intention to prejudice the underwriters in the contemplation of the party, as an highly probable consequence of his act, that then there would be no pretence for sustaining the indictment. I shall not go into a discussion upon the effect of the evidence.

Mr. *Fielding*.—I have no conception of there being any substantive proof, that can be equivalent to an absolute demand of the party, by himself, or by his agent, upon the underwriters, for payment of the money, upon the policy being forfeited.

Lord *Ellenborough*.—I am quite of a different opinion.

Mr. *Fielding*.—Is your lordship of that opinion with respect to Codling.

Lord *Ellenborough*.—I think the intention to prejudice prior to the act done, and before the claim arises, can be made out most satisfactorily by antecedent circumstances, supposing the fact to be so.

Mr. *Fielding*.—It is strongly analogous to ten thousand cases, where the mind must go many a step beyond the first inception of the crime, to render the man criminal:—a man possessed of a forged instrument, intends to commit the crime of uttering it; but no crime will attach till the instrument is uttered.—So

here there is no possibility of a crime being committed, till the intention is manifested of claiming the money of the underwriters: nay it must be an absolute claim of the money; and I was about to say only this, and when I say it, your lordship will forgive me. It appears from the whole of the case, that they have most sufficiently proved to this length the preparation of all the means necessary to enable them to carry this intent into execution; but that they have not gone a step further.

I am sure your lordship will forgive me now for calling your attention to what I conceive to be the meaning of this act of parliament, and beyond which I think it cannot be carried; and in doing this, I am obliged to take notice of what fell from your lordship, in consequence of a question which I asked Brewer. I asked Brewer, whether the ship was destroyed. Your lordship added to that a term, which if it were found in the act, I should not have addressed a syllable to your lordship; but these terms are not found in the act, and they appear to me to be necessary to be in the act, in order to support the indictment now before the Court. The three modes of destruction, if I may so say, namely, the casting away, the burning, and the destroying, are all the terms that are made use of. I take for granted that I need not waste your lordship's time by saying, that as to the possibility of the words, *casting away*, bearing upon this case, it would be idle to suppose that this ship was cast away. Then as to the second, that is as clearly out of the case. Then comes the third—

Lord *Ellenborough*.—I think this vessel was as clearly cast away as it is possible to use language to express. If a ship which is cast to the bottom of the sea, useless to all purposes whatever in the situation in which it is, be not cast away, I must have cast away a good deal of time in using words that are less applicable to it.

Mr. *Fielding*.—If that is the impression on your lordship's mind, I am sure I shall not trouble you with any farther observations.

Reid.—I leave my defence to my counsel.

Mr. *Sergeant Bayley*.—I submit to your lordship, that the prisoner, *Reid*, was not an officer of the ship, within the meaning of the act of parliament. The act extends only to the owners of the ship, the captain, the officers, and the mariners. The term *officer*, in the act, is a general term; but from the other terms of the act with which it is associated, I humbly submit that it can only extend to those persons who are properly called officers of the ship, namely, such officers as have something to do with the navigation and management of the ship itself. From the general nature of the employment of a supercargo, independent of any particular proof in this case, I should humbly submit that he is not an officer within the meaning of this act. He

may be an officer to certain purposes, but not for the purpose of committing the offence here. I apprehend that the general duty of a supercargo is nothing more than to superintend the cargo when it shall arrive at the port of its destination: that instead of the owner of the cargo employing an agent to dispose of that cargo, when it shall arrive at the port of its destination, he sends a person, whom I may call a passenger on board the ship, for the purpose of acting upon that cargo at the time it shall arrive at the place of its destination. In that light, in general a supercargo is not an officer belonging to the ship. The supercargo, generally speaking, is appointed by the owners of the cargo, and not by the owners of the ship; and I submit, that the term in the act applies to those persons only who are employed by the owner of the ship. The owner of the ship, your lordship knows, generally employs the captain, the mate, the other officers, and the mariners, for the purposes of the navigation; I humbly submit to your lordship, that a supercargo is not an officer, in any degree, for the purpose of navigation, but that his duty scarcely begins until the voyage terminates.

I am perfectly well aware, that in this particular case it does appear that there was a document put into the hands of Mr. Reid, by which he appears to have had, perhaps, greater powers than supercargoes have in general. It is an appointment from those persons who, in this particular instance, were owners of the ship, and owners of the cargo also; but they ship him supercargo for the purpose of taking charge of the conduct and management of the goods, and to take the sole navigation and management of the ship; and to displace the master, and appoint another if he shall think fit; therefore, he was to be in two capacities on board the ship: he was to be supercargo, with the power if he should think fit, of displacing the captain, and of taking upon himself, after so displacing the captain, the sole navigation and management of the ship. I humbly submit, that the term *officer*, in this act, applies to those officers who are ordinarily appointed for the purposes of navigation, and therefore to those officers who are under the control of the captain. Your lordship will observe the order in which the term officer is introduced into the act; you have the captain first; then the master, as a kind of subordinate person—a person next in rank; then the officers; and ultimately the mariners. Now certainly Mr. Reid had not any office, with respect to the navigation of the ship, subordinate to the master; it was only eventually, if he should think fit, that he was to have any thing to do with the navigation and management of the ship. It does not appear that, from the beginning to end, he took upon himself to act in any respect in the navigation and management of the ship; therefore

I humbly put this case to your lordship, whether your lordship can consider Reid, in this case, to be an officer upon whom the act of parliament meant to attach. The great object of the act was, to put a check upon those persons who are ordinarily on board ships and those persons who have ordinarily the conduct of navigating those ships. I do not put this as a point to your lordship, because I feel that I am peculiarly distressed with respect to Mr. Reid, for I have evidence for him, but I think I should not have discharged my duty, standing here as counsel for him, if I had not addressed this objection to your lordship's consideration.

Mr. Gurney.—My Lord, I am also of counsel for the prisoner Reid.

It can scarcely be necessary for me to remind your lordship of a proposition so clear and indisputable, that all penal statutes, and especially a statute so penal as this, should be construed with the utmost degree of strictness. If, therefore, it were a matter of doubt, whether a supercargo be or be not an officer of the ship, within the meaning of this act of parliament, my client will be entitled to the benefit of that doubt; because it has been the constant practice of the judges of England, in all times, in cases where acts of parliament have been imperfect or obscure, to lean to the side of the accused, and particularly in *favorem vite*.

My lord, the description of the prisoner's office totally excludes the idea of his being an officer of the ship. He was *supercargo*. The supercargo has nothing to do with the management of the ship, he is to dispose of the cargo; he is the agent of the owner of the cargo, who may or may not be the same person as the owner of the ship. It is indeed notorious, that in ships of this description, a supercargo is put on board by the owner of the cargo, for the purpose of saving the expense of having resident agents at the port to which the cargo is consigned.

But a paper has been produced in evidence to show, that whatever be the general nature and character of the office of supercargo, and however remote it may be from that of an officer of the ship, still that the prisoner, Reid, had taken upon himself the responsibility of an office of a much more enlarged description; the powers of which extended to a complete control over the ship, the captain and the crew. I speak of the letter of attorney, signed or purporting to be signed, by Easterby and Macfarlane.

Whatever powers Easterby and Macfarlane were disposed to confer upon my client, Mr. Reid, there is no evidence that he was disposed to accept of them. It is not pretended that he ever did any one act in pursuance of that letter of attorney. There is no ground to conclude that he ever adopted it, or meant to adopt it. That he accepted the appointment of supercargo is clear; because in consequence of the appointment, he went on board the ship

in that character. But the powers contained in the letter of attorney are totally distinct and different from those which are described in the appointment to the situation of supercargo. Those powers he might either execute or refuse to execute; and whether he intended to execute or refuse, there is no evidence in the cause to decide. For the only act he ever did respecting that letter of attorney, was the delivery of it to Mr. Langridge, as a paper in his possession, the instant he was accused of participating in the crime which is now the subject of consideration in this court.

The prisoner Reid not having acted in pursuance of that letter of attorney, I submit to the Court, that he is to be considered as a common supercargo, having no other duties than those of a supercargo to perform, and those duties being foreign to the management, control, and navigation of the ship. Indeed, if a supercargo were to attempt to interfere with the captain in the management of the ship his interference would be slighted, and his orders disregarded; because it is impossible that he could be considered other than as a passenger who would have certain duties to perform with respect to the cargo, when the ship arrived at the port to which she was destined.

If your lordship thinks that any farther evidence respecting the nature of the office of supercargo should be adduced, probably we may be able to adduce farther evidence. But upon the case as it stands at present, I humbly submit to the Court, that for the reasons I have suggested in addition to those which have been urged by my learned leader, the prisoner Reid was not an officer on-board this ship at the time it was cast away; and, consequently that he must be acquitted.

Lord *Ellenborough*.—The point that has been made, has been very properly made. It is fit for consideration, and it shall have it. Whether the supercargo be an officer of the ship, within the meaning of this act of parliament, is very fit to be the subject of consideration with the judges. But as you mean to give some evidence illustrative of what that character is, as to its general situation and circumstances, you are at liberty to give that evidence; and it is unnecessary for me to do more at present than to say that when we have heard that evidence, if it does not make any other impression upon me and upon my learned brother than we have at present, we shall think it fit to submit the matter to the highest consideration.

Macfarlane.—I leave my defence to my Counsel.—There are a number of gentlemen who will come forward to speak to my former conduct and character. I have served his majesty twenty-eight years, sixteen of which I served abroad.

Easterby.—I leave my defence to my counsel.

The Hon. *Thomas Erskine*.—My Lords:—The evidence on the part of the crown being now closed, I rise on the part of the prisoner *Easterby*,—for whom alone I am counsel,—to submit to your Lordships that no evidence whatever has been given to bring him within the jurisdiction of the court of Admiralty, and that he cannot, therefore, be called upon for any defence.

I agree with your Lordship in the answer already given to the objection taken by my friend Mr. Fielding—fily and ably taken by him under the different situation of his client. It was the only objection which he could possibly interpose; and, had I stood in his situation, I should, therefore, have endeavoured to maintain it, as it was equally open to the prisoner *Easterby*; but I forebore altogether from insisting upon it; because, having no confidence in it, and having other objections which deserve the greatest attention, I was very little disposed to lose any part of the credit I may have with the Court by beginning with an objection not supported in my own judgment and only forced upon my learned friend Mr. Fielding from necessity—a necessity, fortunately for the prisoner *Easterby*, not applicable to him.

I admit, that if there be any evidence, however unfit and unlikely to be acted upon by the jury, which yet, if believed, would remove me from the point of law, as an abstract consideration, that my mouth must be closed. I admit that it is not open to me at all to discuss how much or how little may be inferred from circumstances against the prisoner, provided the Court has jurisdiction to consider them, and therefore I confess that I felt during the whole progress of the proof a considerable degree of anxiety, because if there had been any evidence whatever that *Easterby* had ever been on board of the *Adventure* it must have been left to the Jury upon the whole evidence what share he had in the acts imputed to the owners, and whether his participation and assent had existed upon the sea; but of this fact there is not only no direct proof, but nothing from whence the Court can be warranted in law to direct or advise the Jury to find it—and therefore I stand precisely in the same situation as if in a civil case I were calling upon your lordship to nonsuit a plaintiff who had given no evidence whatever to maintain his suit.

My argument, my Lords, resolves itself shortly into this proposition.

That by the constitution of the High Court of Admiralty, as it is fixed by the general law, it can take no cognizance of a felony committed upon the land—and that the particular act of parliament on which the prisoners are indicted,—which created the offence, and directed the mode of punishment,—has not enlarged its jurisdiction—the framers of it might most probably have intended it, but they have not done it. I am aware of the general feelings of the public when the law is found unequal

to reach great offenders, but the wise and thinking part of mankind need not be reminded at this time of day, that if a defective law could therefore be overleaped to reach them, the same principle would extend also to overleap all the barriers which our free government has set up for the protection of the subject against arbitrary discretion and power. It is also too late in the day to attempt to depreciate the argument I have presently to offer to you, by critical discussions upon the nature of local jurisdictions—Whether they were originally wise or necessary, and whether they are not useless and even embarrassing to justice, in the present state of things, I leave to the historian, the commentator, or the student; my business is with what the law beyond all question was, and is, and not *why* it was and is so—One thing however I will say, because it may give pause to rash thinkers on such subjects; that local jurisdictions were inseparable from the very nature of the feudal constitutions of our earliest ancestors, which are the root and foundation of our present free and firm government, and in my opinion the main reason that it has continued to be firm and free amidst the revolutions that have shaken and are still shaking the earth.

Feudal jurisdictions were in their very nature local, and so completely feudal was the whole judicial system of Great Britain, that though for ages before the reign of king Henry 8th, she had been naval and commercial, a circumstance which could not but have produced in innumerable instances a great defect of justice from her judges and juries being unable to extend their authorities beyond the limits of the island, yet there never was even an attempt or a thought before that period to draw to the cognizance of the English laws the crimes even of English subjects when committed upon the sea or out of the realm of England: the crimes, however heinous, did not even range themselves in the catalogue of offences, and could only be tried according to the course of the civil law. To avoid these many inconveniences, the statute of Henry the Eighth erected the Court of Admiralty—but not by confounding ancient distinctions—the remedy was merely statutable; altering no land-marks, abrogating no ancient rules or analogies, and confined to the strict enacting letter—a position clearly established from the whole course and series of the statutes on the subject down to the present times.

The statute of Henry 8th, after reciting in its preamble that pirates, thieves, murderers, and robbers upon the sea had frequently gone unpunished because the trial of such offenders had been before the lord admiral according to the course of the civil law, gives authority to the king to direct his commission to the lord admiral, the lord chancellor, and others, who might enquire of such offences by a jury of the shire named in the commission as if the offences had been com-

mitted within such shires—But so cautiously and circumspectly did the legislature proceed, that it only gave this new forum of trial, without altering the nature or punishment of the offences, not even creating them felonies, so as to surround them with all the consequences and analogies of British justice.—This may appear at first view, strange and singular, but it is not at all so when the general law at that time with regard to the locality of trial is considered.

At the time the statute of Henry 8th was made, if part of a felony had been committed in one county, and part or rather the consequence of the felonious act had become consummate in another, the trial could proceed in *neither*.

As, if a man had received a mortal stroke in one county and then had crossed a brook into another, and there died, though so near that you might touch him, it is perfectly notorious that till by the provisions of a subsequent statute, there was a total failure of justice.

There was also a similar defect with regard to principal and accessory. If a man having been accessory to a felony in one county, but the felony had afterwards been committed in another, or if after a felony committed in one county there had been an accessory after the fact in another, in neither of the cases could the accessory be tried, because the guilt of an accessory depending upon the consummation of the offence by the principal, he could not be convicted till the felony was established; and by the law *as it then stood*, the authority of juries to inquire, being absolutely confined to their particular counties, they could not find the fact upon any evidence if beyond the limits of their shire; and thus in all cases of accessories, unless where the felony happened to be hatched and consummated in the same county, there was a total failure of justice. In the earlier ages, when society was in a less civilized and commercial state, these cases had probably occurred less frequently: men went seldomer to a distance, and defects in the locality of feudal trial had not grown to such a magnitude as to induce parliament to break in upon the grand principles of feudal jurisdiction, which was a species of domestic tribunal, where men judging and judged, and the witnesses also were known to and connected with one another. The elements of social and civil life, my lords, are awful considerations, and must not be suddenly or rudely departed from, but must be changed insensibly as society insensibly extends and changes.

I take for granted that I shall not be called upon for authorities to maintain these positions, when the statute of the 2nd and 3rd of Edward 6th solemnly declares them, and acts upon them.—Statutes indeed frequently recite that doubts had arisen where the doubts were unfounded, and remove them in future by legislative provisions declaratory of the ancient law; but this act of Edward 6th *holds quite a different language*: It is a history of

the law—it recites its origin and its defects, and provides a remedy, but a statutable remedy, limited of course by the enacting letter of the law. I desire the attention of the Court whilst I read this preamble, because it is absolutely conclusive of the subject before you. The defect of jurisdiction which you must today submit to in only this single instance,—and which parliament will undoubtedly put an end to in the hour it assembles,—is a defect in the execution of a *single statute only*, and of modern date, whereas the defect remedied by the statute of Edward 6th, had existed for ages, in innumerable instances, and was a *total defect of justice*, not in cases of crimes upon the high seas, but in the very heart of the kingdom, and in every case of felony when the invisible unsubstantial boundaries of counties divided the felonious act from its consequence, or the machination of guilt from the accomplishment.

The act * in its preamble recites that it often happeneth “in sundry counties of this realm, that a man is feloniously stricken in one county, and after dieth in another county, in which case it hath not been founden by the laws or customs of this realm, that any sufficient indictment thereof can be taken in any of the said two counties, for that by the custom of this realm the jurors of the county where such party died of such stroke can take no knowledge of the said stroke being in a foreign county, although the same two counties and places adjoin very near together, ne the jurors of the county where the stroke was given, cannot take knowledge of the death in another county, although such death most apparently come of the same stroke: so that the king’s majesty within his own realm cannot, by any laws yet made or known, punish such murderers or manquellers for offences in this form committed and done; nor any appeal at some time may lie for the same, but doth also fail, and the said murderers and manquellers escape thereof without punishment, as well in cases where the counties where such offences be committed and done may join, as otherwise where they may not join. And also it is a common practice amongst errant thieves and robbers, in this realm, that after they have robbed or stolen in one county, they will convey their spoil, or part thereof so robbed and stolen, unto some of their adherents into some other county, where the principal offence was not committed ne done, who knowing of such felony, willingly, and by false covein, receiveth the same: In which case, although the principal felon be after attainted in one county, the accessory escapeth by reason that he was accessory in another county, and that the jurors of the said other county, by any law yet made, can take no knowledge of the principal felony ne attainer in the first

“county, and so such accessaries escape there—
“of unpunished, and do often put in ure the
“same, knowing that they may escape with-
“out punishment.”

Your lordships may observe, that there is a studied attention in the judicious framers of this act, to point out, in the strongest colours, the defects in the law intended to be remedied; not only to preserve the legal history of the country, but to manifest that it is not upon light occasions that the statutes of England interfere with ancient customs and jurisdictions: for the common law is a venerable and harmonious system, not to be rashly touched, and above all by the makers of laws, who are ignorant of its universal principle and structure. The preamble of the statute is therefore *a clear and precise history of the law in the part to be affected by the proposed remedy*; and the enacting part accordingly directed that in future the trial should proceed as if the felonious stroke and death were in one and the same county, and that upon the trial of the accessory where the principal felony was in another county, the justices should send to the *custos rotulorum* to certify the conviction of the principal, and then the trial should proceed against the accessory in the county where his offence was committed. Thus the locality of jurisdiction was studiously preserved, and nothing altered, except where it was necessary to remedy a defect of justice, by bringing anomalous cases within the reach of the laws.

It is necessary to pause here a moment, in order to see distinctly the state of jurisdiction at this period.

Before the statute of Henry 8th, crimes committed on the high seas could not be inquired of at all by a jury, but only before the admiral or his lieutenant, according to the course of the civil law—that statute, without at all changing or affecting the quality of the offences, enabled the king to grant his commission to the lord admiral and others for their trial *by a jury*, as if the said offences had been committed upon the land.—And in the succeeding reign the locality of jurisdiction existed with all the rigour and strictness which appears so strikingly in the act of king Edward 6th. The common law jurisdictions existed therefore in their original condition, except as altered by the enacting letter of these two statutes, and the Admiralty Court could hold no jurisdiction under the act of Henry 8th, unless where the offence was committed *on the high seas, or in creeks and havens of the sea*.

It did not occur to the legislature at this time that cases might arise, in which an accessory *upon the land* might procure a murder, or piracy, or other felony, or crime to be committed upon the sea, for otherwise the statute of Henry 8th would most unquestionably have extended to that necessary and seemingly obvious provision; because nine times out of ten, crimes of this description take their birth from conspiracies *upon the land*. The evil of

* 2 and 3 Edw. 6, c. 24.

this omission was soon felt in many cases, and accessaries upon the land to offences on the sea escaped without punishment. Lord Hale, who wrote in the time of Charles 2nd, near one hundred and fifty years after the passing the act of Henry 8th, expressly says, in his Pleas of the Crown, that there was no law to reach such offenders, and the defect continued until it was remedied in part by parliament in the reign of king William: the defect had existed in all the intermediate time, and had been grievously felt, and solemnly recorded in the books of the law, yet the judges never thought of extending the existing statutes, by construction, or rather indeed of making law by their own authority to reach the omitted cases; the legislature alone could apply the remedy and it was applied accordingly, though very defectively by the statute 11th and 13th of William 3rd, chap. 7.

This statute after reciting that evil-disposed persons had set forth pirates from the land, and that from defects in the laws they could not be brought to condign punishment, enacts, that any person who should either on the land or upon the seas, set forth any pirate to commit piracies or robberies on the seas, or should receive or conceal such robbers, or take into their custody any thing piratically or feloniously taken by them, should be adjudged to be accessaries, and be tried according to the statute of king Henry 8th. This is the first time that parliament adverted to a case so probable, and both before and afterwards so common, as that persons on the land, should before or after the fact be accessaries to crimes committed upon the seas. It is most strange and unaccountable, that though the very case was now before them, and though they were providing so necessary and long wanted a remedy, they should stop short of their object and confine their remedy to accessaries, to *piracies and robberies, only*, leaving out murder, though murderers were expressly within the letter of the statute of Henry 8th. And it was not till the reign of George 2nd, that this defect was remedied; and although it existed during so long a period, no court or judge ever conceived that it was possible to cure it by judicial authority; and to show how completely these jurisdictions are creatures of the statute law, and how impossible it is to extend them by analogy, or to judge of the intention of the legislature, except by the letter of statutes, when parliament at last interfered to remedy the defect, which was cured as to piracy and robbery by the statute of king William, but which still remained as to murder, when the mortal stroke or poisoning was on the land, and the death on the sea, or *e converso*, it did not give the jurisdiction to the Admiralty in either of these cases; but, in direct opposition to the statute of king William, directed that the indictments and trials against both principals and accessaries, in all such cases, should be taken before

the justices of Gaol Delivery or of Oyer and Terminer, in the same manner as if the whole of the offences were committed upon the land. As this important statute is very short, I will read it.

Second Geo. 2, chap. 21.—“An act, for the trial of murders, in cases where either the stroke or death only happens within that part of Great Britain called England.
“For preventing any failure of justice, and taking away all doubts touching the trial of murders, in the cases hereinafter mentioned; be it enacted, by the king's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Common^s, in this present parliament assembled, and by the authority of the same, that where any person, at any time, after the 24th day of June, in the year of our Lord 1729, shall be feloniously stricken or poisoned upon the sea, or at any place out of that part of the kingdom of Great Britain called England, or where any person, at any time, after the 24th day of June, in the year of our Lord 1729, shall be feloniously stricken or poisoned, at any place, within that part of Great Britain called England, and shall die of the same stroke or poisoning, upon the sea, or at any place out of that part of the kingdom of Great Britain called England; in either of the said cases, an indictment thereof, found by the jurors of the county, in that part of the kingdom of Great Britain called England, in which such death, stroke, or poisoning, shall happen, respectively as aforesaid, whether it shall be found before the coroner upon the view of such dead body, or before the justices of the peace, or other justices or commissioners, who shall have authority to inquire of murders, shall be as good and effectual in the law, as well against the principals in any such murder, as the accessaries thereunto, as if such felonious stroke and death thereby ensuing, or poisoning and death thereby ensuing, and the offence of such accessaries, had happened in the same county where such indictment shall be found; and, that the justices of Gaol Delivery and Oyer and Terminer, in the same county where such indictment shall be found; and also any superior court, in case such indictment shall be removed into such superior court, shall and may proceed upon the same in all points, as well against the principals in any such murder, as the accessaries thereto, as they might or ought to do, in case such felonious stroke and death thereby ensuing, or poisoning and death thereby ensuing, and the offence of such accessaries had happened in the same county where such indictment shall be found; and that every such offender, as well principal as accessory, shall answer upon their arraignments, and have the like defences, advantages, and exceptions (except challenges for the hundred) and shall receive the like

"trial, judgment, order, and execution, and suffer such forfeitures, pains, and penalties, as they ought to do, if such felonious stroke and death thereby ensuing, or poisoning and death thereby ensuing, and the offence of such accessories had happened in the same county where such indictment shall be found."

The application of all these statutes, to the case now before the Court, will appear presently. I have avoided even naming the act upon which my client Easterby stands indicted, because it is impossible to deal with it without understanding, thoroughly and clearly, the jurisdictions of the kingdom, by which its interpretation must be governed. The application, then, of all these statutes, and from which I do not merely argue, but venture to pronounce positively, even from this place, that nothing can legally remove me, is, shortly and plainly this—

That the Admiralty court has no original jurisdiction of the kind now executing with the assistance of a jury, by the ancient laws and customs of this realm, over any crime whatsoever; that it stands, wholly for its authority, upon the statute law; that the act of Henry 8th confined its jurisdiction, under a commission like the present, to offences committed upon the sea, or its havens; that where the crime was committed, partly on the land and partly on the sea, either as to principals or accessories, this statute gave no jurisdiction; that the defects were remedied as they occurred to the legislature, and that so far were any original or remaining defects of a nature to be cured by analogies and judicial constructions, parliament itself adopted directly opposite jurisdictions, as to different crimes, as if it were to show that the remedies were statutable, and were to be drawn into no example to disturb the ancient jurisdictions; and, indeed, when it became necessary for parliament to interfere to prevent a failure of justice, even when the whole crime was committed within the body of the realm, and only broken into imaginary parts by the divisions of counties, it becomes almost indecent and ridiculous to say that judges could advance, without the same warrant to unite the land and the sea, immemorially and naturally separated.

We are now brought to the statute on which the indictment is founded, viz. the 11th of George 1st, chap. 20, which creates the offences, and provides the jurisdictions for trial. The offences had indeed been created before by an act of the 4th of the same king, in nearly the same words, but so imperfectly and blunderingly worded as to the remedy, that it became necessary for parliament to pass the law now in question, which unfortunately did not much improve upon its imperfect original.

I will first read the whole of it to the Court, and afterwards comment upon the defective parts.

"And whereas by an act made in the fourth year of his majesty's reign, intituled, An Act for enforcing and making perpetual an Act of the twelfth year of her late Majesty, intituled, An Act for preserving all such ships, and goods thereof, which shall happen to be forced on shore or stranded on the coast of this kingdom, or any other of his majesty's dominions, and for inflicting the punishment of death on such as shall wilfully burn or destroy ships, it is amongst other things enacted, that if any owner of, or captain, master, mariner, or other officer belonging to any ship, shall, after the twenty-fourth day of June which shall be in the year of our Lord one thousand seven hundred and eighteen, wilfully cast away, burn, or otherwise destroy the ship, of which he is owner, or unto which he belongs, or in any manner or wise direct or procure the same to be done, to the prejudice of any person or persons, that shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, he shall suffer death.

"And whereas some doubts have arisen touching the nature of the offence provided against by the said recited act, and the trial and punishment to be had and inflicted for the same, Be it therefore enacted and declared by the authority aforesaid, that if any owner of, or captain, master, officer, or mariner, belonging to any ship or vessel, shall, after the four and twentieth day of June, one thousand seven hundred and twenty-five, wilfully cast away, burn, or otherwise destroy the ship or vessel of which he is owner, or to which he belongeth, or in any wise direct or procure the same to be done, with intent or design to prejudice any person or persons, that hath or shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, or of any owner or owners of such ship or vessel, the person or persons offending therein, being thereof lawfully convicted, shall be deemed and adjudged a felon or felons, and shall suffer as in cases of felony, without benefit of clergy.

"And be it further enacted, by the authority aforesaid, that if any of the said offences, in wilfully casting away, burning, or otherwise destroying, any ship or vessel, as aforesaid, shall be committed within the body of any county of this realm, the same shall and may be inquired of, tried, determined, and adjudged, in the same courts, in such manner and form, as felonies done within the body of any county, by the laws of this realm are to be inquired of, tried, determined, and adjudged; and if any of the said offences shall be committed upon the high seas, the same shall be inquired of, tried, determined, and adjudged, before such court, and in such manner and form, as in and by an act, made in the eight-and-twentieth year of the reign of king Henry the eighth,

"intituled, for pirates, is directed and appointed, for the inquiring, trying, determining, and adjudging, of felonies, done upon the high seas."

To that part of the act which creates the offences, I take no objection; it is sufficiently clear and explicit; I have only to remark, that though the procurer or accessory is comprehended under the penal letter, he is not declared to be a principal felon; this, however, is not material to my argument, as it will stand upon precisely the same principles, whether the prisoner be considered as the one or the other; but it is always best to take the law as it is, and there can be no doubt upon the subject. The language of lord Hale is positive. My learned friend, Mr. Sergeant Best, who is counsel for another prisoner, has taken the very words in which he delivers it as law, that unless a statute enacts that a party procuring a felony to be committed shall be deemed and taken to be a principle, he is an accessory only. When a felony is created by statute, he that procures it to be committed becomes an accessory by the general law, without any enacting words, but to make the procurer of a felony a principal felon, he must be so declared by the statute, and Easterby has, therefore, been so considered by the Court, from the order in which he was called upon for his defence, otherwise I should, from precedence, have first had to address your lordship, had all the prisoners been taken to be principals.

All this, however (as I have already said), is immaterial to my argument; it is enough for me that the act charged upon the prisoner Easterby, viz. *that being an owner of the brig Adventure, he wilfully procured her to be cast away, to defraud the underwriters*, is, by this act only, and by no other law, created a felony, and consequently, whether he be an accessory or a principal felon, he is the one or the other solely by the operation of this law; and before I make any verbal criticism upon the last clause, which alone creates any jurisdiction by which these offences can be punished, I wish to prepare your lordships minds for the defects I mean to impute to it, or rather which it will itself show (the moment it is read), when the attention has been previously drawn to the subject.

It is self-evident that it did not occur to the framers of the act that the offence of the procurer of the destruction of a ship, whether he were to be considered as principal or accessory, might be committed upon the land, though the destruction itself might be, as it most commonly is, upon the sea. The same imperfection belonged to the act of Henry 8th, and which (as I have already shown) was not remedied till the time of king William, and then remedied as to piracies and robberies only, the defect remaining as to accessories on the land to murders at sea till the reign of George 2nd. The probability is, that the makers of this general act passed at

the end of a session, and addressing itself to many different objects (as appears by its title) had not adverted to, nor perhaps were acquainted with these statutes, nor of the niceties attending jurisdictions.

The words of the clause which at once raise and decide the question, are as follows:

"And be it further enacted, That if any of the said offences, IN WILFULLY CASTING AWAY, BURNING, OR OTHERWISE DESTROYING ANY SHIP OR VESSEL AS AFORESAID, shall be committed within the body of any county of this realm, THE SAME shall and may be inquired of, tried, determined, and adjudged in the same courts, in such manner and form as felonies, done within the body of any county, by the laws of this realm, are to be inquired of, tried, determined, and adjudged; and if any of the said offences shall be committed upon the high seas, the same shall be inquired of, &c. &c. before such court, and in such manner and form as is directed by an act made in the twenty-eighth year of Henry 8th, intituled for pirates," &c. &c.

Your lordships being now in possession of the whole clause, let us attend to its parts.

It begins thus—"And be it enacted, That if any of the said offences, IN WILFULLY CASTING AWAY, BURNING, OR OTHERWISE DESTROYING, ANY SHIP OR VESSEL, AS AFORESAID;" and there it stops. It had, in the antecedent section, made the *procurer* such destruction to be a felony also; and yet, though the section now under consideration, was expressly made to give a jurisdiction and forum of trial for all the offences created by the statute, it takes no notice whatever of the second class of offenders, viz. the procurers; it goes too far, and yet not far enough; if it had said, that if any of THE SAID OFFENCES shall be committed upon the land, then by express reference to the antecedent section both classes of offenders would have been comprehended; but by going on to enumerate the first class only, and stopping short, without advancing to the second, the generality of the terms *any of the offences aforesaid* is limited and narrowed to the precise and defective enumeration, viz. "any of the said offences, in wilfully casting away, burning, or otherwise destroying, any ship or vessel;" and consequently the statute only directs that if the offences so enumerated, and not all the offences generally, shall be committed upon the land, they should be tried by the ordinary courts, and if on the sea, by the Admiralty, appointing no jurisdiction whatsoever for the accessory, who, at all events, if an accessory UPON THE LAND, to this new offence if consummated UPON THE SEA, could most unquestionably be tried by no jurisdiction whatsoever. If wholly committed upon the sea it would have been different, but when part of this new offence happened to be upon the land, and part upon the sea, it is perfectly plain, from all that I have been so long troubling

you with, that without a jurisdiction given by the statute itself, there could be no jurisdiction at all.

But supposing me to be mistaken in this objection, and that the words I have commented on do not furnish it: supposing that this concluding sentence had expressly said that "if any of the said offences," (comprehending all of them by reference, or afterwards comprehending all of them by a distinct and complete enumeration) should, if committed upon the land, be tried by the ordinary courts, and if upon the sea by the Admiralty; still, as the statute is worded, it is most obvious that my objection would not at all be removed or even touched. By the statute, as it actually stands, no jurisdiction at all is given for the trial of the accessory; it is wholly omitted; but waving all objection to that omission, and taking the section creating the jurisdiction to apply to both classes of offenders, which it certainly does not, yet still it would only apply to them considering both the procuring and the destruction to be entirely upon the sea, or entirely upon the land, and leaves wholly unprovided for the case of Easterby, a procurer upon the land, of a ship to be destroyed, and afterwards, in fact, destroyed upon the sea. It appears by no evidence whatever that Easterby ever had his foot on board the Adventure, and consequently what he did he did upon the land, and it is therefore utterly impossible, without first supplying words that are omitted, and inverting them after they are supplied, to give the Admiralty a jurisdiction under this statute; since it has none over offences upon the land by the general law, or the statute of Henry 8th, and since the statute creating the offences directs them, when committed on the land to be tried in the ordinary courts of criminal justice. If the words, indeed, had been "that if any of the said offences," comprehending all by reference, or enumerating all, should be committed upon the sea, THE TRIAL should be in the Admiralty, it might have been speciously argued, that it was the intention of the legislature to give the jurisdiction to the Admiralty, when any part of the offence took place upon the sea. But the words of the act expressly exclude such a construction, even if such a latitude could be allowed in construing a penal statute; because, after saying that, if any of the offences (no matter whether completely or defectively enumerated) should happen upon the land, it enacts—not that THE TRIAL should be in the ordinary courts, but that THE SAME, referring to the offences, should be so tried, and consequently each offence must fall to be tried by the one or the other tribunal, accordingly as it was committed upon the land or upon the sea. Easterby, therefore, cannot possibly, upon the evidence which is now closed, stand legally for judgment before this Court. I know very well, my lords, that there is nothing which a Court so powerfully resists as a total failure of justice when enormous crimes have been com-

mitted; and perhaps it may be said, that if your lordships shall now decide in favour of my argument, by pronouncing against the jurisdiction of the Admiralty, that I shall be found hereafter presenting a similar objection when he is indicted in the ordinary courts:—to that I can only answer, that when the occasion arises, I shall do my duty then as I do it to-day: WHAT THE LAW SAYS I SHALL THEN SAY. Except as to the forms of trial, I can have no possible wish to oust the jurisdiction of this court.—It is indifferent to me whether the anchor or the arms of the city be suspended over the heads of the judges; and for the excellent and learned person who presides on this occasion I have the highest possible respect*;—so I have for the jury here impanelled: but I have a right to every objection that stands with the prisoner's present safety. If my learned friend should be able to show your lordships, that the proceedings must have failed if brought before the ordinary courts, that may be a just argument; but it will be no answer to mine. The obtaining or not obtaining redress hereafter in any other place, can be nothing to the present consideration.

My lords, I have nothing to add; but that if your lordships should be of opinion that this court has jurisdiction over the prisoner's offence, and that the jury ought to be charged with the evidence, I shall offer some hereafter, in order to raise another legal objection; which, as it must rest upon a fact not yet established,† and as it cannot be called for unless the Court has a jurisdiction to hear it, I have not even adverted to it in any thing I have said.

Mr. Sergeant Best.—I submit to your lordship, it is clear from the language of this indictment, that it is impossible your lordship here in a court of admiralty can take cognizance of these two persons. Your lordship knows it is necessary to state in an indictment, and to make out by proof, that the offence was committed within the jurisdiction of the Admiralty; that is, that it was committed upon the high seas; if your lordship looks at this indictment, you will find in it the usual and necessary averment, that the supposed crime of these two prisoners was on the high seas, and within the jurisdiction of the court of Admiralty. What the law requires should be averred either for the purpose of establishing the crime, or to give the power to try, must, before a conviction can be obtained, be established by proof. So far from there being any affirmative proof to support this averment, the evidence that has been adduced distinctly negatives it.

* Sir William Scott.

† The question of ownership: which afterwards arose out of the proof of the ship's register being in the name of Macfarlane only.—Orig. Edit.

I contend, therefore, that my client must be acquitted, inasmuch as the necessary allegation in the indictment is not supported by the evidence. There are in this indictment two different species of offence; that is, the offence of the principal, and the offence of the accessory, which, in considering the question of jurisdiction, ought to be taken as two distinct offences. Two of these persons, Reid and Codrington, are indicted for doing this act upon the high seas; the other two persons, Easterby and Macfarlane, are charged with directing and procuring the offence to be done and committed.

For the purpose of giving your lordship jurisdiction to try the offence of procuring as well as the offence of executing that which was procured to be done by the other, it was absolutely necessary to charge in the indictment, that the procurement as well as the act procured to be done was upon the high seas; it is so charged in every count in this indictment; your lordship knows it is an undoubted principle of the law of this country, that the *allegata et probata* must be correspondent.

Upon this short and common ground of defence, these two persons, Easterby and Macfarlane, must be acquitted; because, unquestionably, it is not proved in this case, on the contrary it is distinctly disproved—that the offence of procurement, if any did exist, was upon the sea. But to go a little farther, my friend Mr. Erskine has stated to your lordship that the cases of Macfarlane and Easterby are the cases of two accessories—that they are not principal offenders: I believe there can be no doubt upon that point. I am in a situation to satisfy you by the highest possible authority upon any point of crown law, that they are merely accessories; but it is unnecessary to advert to any authorities, for they are charged as accessories by this indictment.

If a man be an accessory to an offence in one county, and that offence be completed in another, where is the accessory to be tried?—I have the same authority to satisfy your lordship that the accessory must be tried in the place where he was accessory, and the principal in the place where he was principal. Your lordship will find in 2 Hale's Pleas of the Crown, 163—"If A had committed a felony in the county of D and B had been accessory before or after in the county of C, B could not have been indicted as accessory in either county at common law; but by that statute he is indictable, and shall be tried in the county where he so became accessory."

Lord Ellenborough.—Those are the words of the statute.

Mr. Sergeant Best.—Yes; I submit, therefore, to your lordship, that it is clear, as I conceive it is, that in this case these two persons stand in the situation of accessories, in procuring an offence to be committed, at the commission of which they were not present; that as such accessories they must be tried

within the jurisdiction where their offence was committed, as accessories; and that they cannot, by any rule of law, be tried where the offence was ultimately complete. The passage that I have cited, applies to cases where the offence is conceived, planned, and executed, within the same jurisdiction; but the next that stands in the book applies to one circumstance in every respect like the present, and appears to me to bear immediately upon the point.—"So, if a stroke were given, *super altum mare*, and the party came into the body of the county and there died, this is casus omissus, and the party is neither indictable by the jury of the county where he died, nor before the admiral, by the statute of 28 Henry 8th, cap. 15." It is not, as my friend has stated, material now to consider whether this be casus omissus or not; or whether, if your lordships discharge them from this indictment and send them to another tribunal, they can before another tribunal be tried again or not; because I am perfectly persuaded that your lordships will agree in the observations made by my learned and honourable friend that if this is casus omissus—if there is no law which respects it—then it is of infinitely more importance that a person should not be convicted of what the law has not declared to be an offence, or what is the same, for which it has provided no legal trial, than that an act, however dangerous to the commerce, or injurious to trade, should pass unpunished.

My learned friend called your lordships attention to several statutes; I shall not trouble your lordship with going over again the grounds which he, with so much ability has pressed upon your lordships, because, by repeating again his arguments I should weaken their force. It appears to me, that the statute of king William is decisive of the present question, and that the legislature has in the fullest manner declared, that the case now before your lordship is one that you cannot entertain jurisdiction of; that statute relates only to the cases of piracy and robbery. Now, if an accessory to this offence of sinking a ship could have been tried independently of some particular provision of the legislature, upon the same principle an accessory for piracy or robbery could have been tried without; yet the legislature have expressly provided for that particular case. The legislature was idly employed, if that which we are contending for now as the rule of law, is not a correct rule; because, if an accessory can be tried by the same jurisdiction which has cognizance to try the principal offender, the statute of the 11th and 12th of William the 3rd, was not necessary—I therefore humbly submit to your lordship that this statute expresses most clearly and unequivocally the opinion of the legislature of the country, that without the particular interference of the legislature, by a provision expressly applicable to the particular subject, the Court cannot try

an accessory in the county where the principal is tried. For the reason I have already given, I shall neither repeat again the statutes that have been adverted to, nor the observations made on them. I will only say that they establish this proposition, that unless the statute which creates this offence has given the Court jurisdiction to try the procurers where the thing procured was done, this Court cannot try those who, on the land, have procured an offence to be committed on the seas.

It appears to me necessary only to call your lordships attention to the act which is under your lordships consideration; and I conceive no person can read the words of it, without seeing that it is absolutely impossible to say it has given to the Court in which your lordships are now sitting, a jurisdiction to try this offence.—“Be it therefore enacted, and declared, by the authority aforesaid, that if any owner of, or captain, master, officer, or mariner, belonging to any ship or vessel, shall, after the 24th day of June, 1725, wilfully cast away, burn, or otherwise destroy the ship or vessel of which he is owner, or to which he belongeth, or in any wise direct or procure the same to be done, with intent or design to prejudice any person or persons that hath or shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, or of any owner or owners of such ship or vessel, the person or persons offending therein, being thereof lawfully convicted, shall be deemed and adjudged a felon or felons, and shall suffer as in cases of felony, without benefit of clergy.”

This clause is wholly silent as to the court in which any of these offences shall be tried, and leaves them all precisely in the same state as principals and accessories were in at common law, when the procurement and the execution took place in different jurisdictions. But I beg your lordship's attention for a moment to this clause of the act. What do the words *direct* and *procure* mean? They either mean to make the party an accessory, supposing the direction and procurement are at a distance from the place where that direction and procurement is carried into execution; and if they make him an accessory, then the passages I have read immediately apply to the point before your lordship; or the words *direct* and *procure* mean the case of a direction and procurement where the party is present at the time of the direction and procurement, and therefore a principal in the offence. If they mean to make the party an accessory, then your lordship cannot try this offence, unless the statute expressly authorizes you. And they cannot make him a principal unless he was present at the time the offence was committed. As it is not proved upon this occasion that these parties were present, I submit to your lordship, that

so far from these parties being liable to be tried and convicted here upon this indictment, charging them as accessories, it is impossible they can be tried or convicted any where.

The next clause of the act, which is the one that relates to the place and mode of trial, so far from giving express authority to try these men here, in terms prevents any inquiry in this place; it is—“And be it further enacted, by the authority aforesaid, that if any of the said offences in wilfully casting away, burning, or otherwise destroying any ship or vessel, as aforesaid, shall be committed within the body of any county of this realm, the same shall and may be inquired of, tried, determined, and adjudged in the same courts, in such manner and form, as felonies done within the body of any county by the laws of this realm are to be inquired of, tried, determined, and adjudged; and if any of the said offences shall be committed upon the high seas, the same shall be inquired of, tried, determined, and adjudged before such court, and in such manner and form, as in and by an act made in the eight-and-twentieth year of the reign of king Henry the eighth.”

This is the clause which gives your lordships jurisdiction. In what manner does it give your lordships jurisdiction? It only gives your lordships jurisdiction to try in this court these offences which are committed upon the high seas; but it in terms, directs your lordships not to try those offences which are committed upon the land; but that that which is committed upon the land should be tried in the ordinary course of the common law; and that which is committed upon the seas only, should be tried in this court; which is the only jurisdiction to try offences committed upon the seas. It is impossible words can make this section of the act more plain: your lordship has only to look at those words, and see what is the limit and extent of the jurisdiction you are now exercising, and inquire whether this offence falls within it. Every thing that was done by these two persons, it appears upon the evidence, was done within the land. By the positive direction of this act; therefore, if done within the land, they are to be tried by the courts of ordinary jurisdiction, within land, and not by this court. Under these circumstances, it appears to me extremely plain and clear, that if any offence is brought home to these defendants, it is an offence committed within the land, and that therefore the Court has no jurisdiction to try it.

Mr. Knapp.—I am also of counsel for the defendant Macfarlane, and after the ability with which these objections have been argued by both the learned gentlemen who have preceded me, it would require still farther apology for me if I were to take up your lordship's time in going into them; therefore, in full confidence, for the reasons which have

been stated by my learned friends, that the objections which they have taken are well-founded, I sit down perfectly satisfied that your lordship will consider them with attention, and that my client will receive the benefit of them.

Mr. *Wetherell*.—I beg to assure your lordships, that, after the point now in discussion has passed under the eloquent review of Mr. *Erskine* and Mr. *Sergeant Best*, I do not presume to suppose that any thing of importance can be contributed to the argument by myself. I am well aware that the principal authorities upon which this question is to depend, have been already brought under your lordships notice, and that I can add but very little of new materials. But having here to discharge the duty of counsel for the prisoner *Easterby*, who is most deeply interested in contending that he is not legally arraigned at the bar of this court, I hope I shall, on that account, be excused; and particularly too in a cause of such great public moment and expectation, if I endeavour to throw any farther light on what has been already urged.

My lords; it is an undeniable maxim of law, that in order to bring punishment home to any criminal, it is not enough that he has committed an offence; another thing is still required: there must be provided, somehow, a court of competent judicature, where his offence can be tried. This maxim has at all times excited, in the minds of the greatest judges, a careful discrimination of the nature of the particular court where their functions were to be exercised, as being the source of their own authority. They found themselves exercising, only in a representative character, the powers of that particular court where they were sitting. It was declared, however great were the exigencies of men, moral justice demanded that their own powers ceased with those of the jurisdiction they represented. Your lordships are sitting here in a court of admiralty. And the question with regard to the prisoner is, not whether he contrived this wicked plan of fraud on the river Thames, or in the city of London; but whether he contrived it within the jurisdiction of the high seas. If he is not a criminal within that jurisdiction, he is wrongly indicted at the bar of this court.

It is true, that this strict rule of power in criminal cases may lead to an occasional failure of justice. But that failure of justice, I must beg to say, is one of the strongest evidences in juridical history, of the existence and inviolable prevalence of the rule itself. Although, therefore, we are contending for an objection which, if successful, will rescue from the hands of justice a great offender, I need not, nor do I mean, to disguise and keep that consequence out of view; but allowing that to be the consequence, the objection which we now rely upon will not be the less a sound objection. I will only beg to say farther, in confirmation of that maxim

which I have just stated, namely, that there can be no trial except in a court whose appropriate powers are completely adequate to reach the offence; that it is exemplified in the universal practice of the criminal law; and used more particularly in the instances I will cite:—First, in the case of murder, where the blow was in one county, and the death in another. Secondly, in the case where there was a robbery in one county and the accessory assisted in another. Thirdly, in the case of an accessory on the land to a piracy at sea. And, lastly, in the case of murder, where the blow was on the sea and the death on the land. Upon all these occasions, until several statutes were from time to time made, to supply the defects of the common law, there could be no trial. This failure of justice was the unavoidable effect of the partition of the criminal judicature of the country. No court was permitted to have an uncircumscribed extent; strict limits were allotted to every one; and locality was made the basis of jurisdiction. Upon this principle, there was no entire offence within the local limits of any court, in any of the examples I have mentioned; and no court, therefore, according to the rule of its local extent, could consider it as exclusively belonging to itself. This position, when examined, will by no means appear to be a mere subtlety. But the principle of law, which said there was no complete crime, grew out of real matter of fact. The crime of murder, taken as a fact, is neither the wound alone, nor the death alone; there must be an end consummated as well as means used. The legal definition of the crime is the same. It is a definition grounded on the real and necessary mode of the thing itself. If it then so happen that the end is in one jurisdiction and the operation producing it in another, there is nothing very difficult to comprehend in saying, that the crime of murder has not been committed in one jurisdiction exclusively of the other. It is the same thing in the case of an accessory in felony; the accessorial interference, as far as it goes, is complete in the county where he aids and assists; but that by itself is not the crime.—The felony must be committed before a man can be said to be an accessory to its commission; and when it is committed, the accessory does not aid and assist in the jurisdiction where it takes place. The accessory's offence cannot exist independently of the principal's; nor can it, under such circumstances, exist with it. The accessory, then, can be tried no where; for in the county where he did give his assistance there was no felony, and in the county where there was a felony he was not aiding and assisting. But it would be a waste of time to pursue this inquiry farther; that such was the state of the common law of England until the contrary was provided for by statute is indisputable. And I have only troubled the Court with stating thus much, for the purpose

of grounding this proposition, namely, that unless it shall be made out, that the statute of 11 Geo. 1st. upon which the prisoner Easterby is indicted, has made him amenable to this Tribunal; and if we can satisfy your lordships that the facts of this case bring him within the common law examples from which we argue, that the same rules of common law will fully sustain our objection, that he is *coram non judice* at the bar of this court. We are not bound, indeed, in order to establish our objection in submitting that he cannot be tried here, to show farther, that he cannot be tried elsewhere, though the point may lead directly to that conclusion; nor are we bound, on the other hand, to find out what court is competent, if this is not; for I am sure that man would argue ignorantly as a lawyer, and ill as a logician, who should reply to us, that there must be a trial for this offence, and that the trial must be here, because on the very data of our objection it can be no where else. Such will not be the ground on which my friends on the other side will explain away the difficulty. I am sure no such an idea will be suggested as that the court of admiralty can derive its sufficiency and powers, upon the present occasion, from the weakness and imbecility of other jurisdictions.

My lords, the objection then upon which we humbly submit, that the prisoner, Easterby, cannot be tried before your lordships, sitting here under an Admiralty commission, is simply this, that the Admiralty jurisdiction, like the county jurisdiction, is strictly and properly local, and that all the analogies, all the rules and principles of the common law which decide the locality or venue of offences between county and county, which give or take away the right of criminal jurisdiction, as between them, are equally in force in every question of venue and locality between the high seas and the land; except, indeed, where a statute shall provide the contrary. It must be so upon all, upon general principle, unless it can be shown that the Admiralty, as a criminal court, is constituted differently from the ordinary tribunals, that it has peculiar privileges of its own, which exempt it from the control of the general law; which privileges must be of so very extraordinary a complexion as to lead to this conclusion; namely, that if a point arises which would be determined one way as between county and county, which would be determined one way in every criminal court in England, the same may be determined another way in the court of Admiralty; that is to say, that the law of England is to be made a different science, and to suffer its first principles to be contradicted from so frivolous a circumstance as the mere appellation of the Marine Judicature as contradistinguished from the county. I can hardly imagine, that such a peculiarity will be seriously thought of for the present occasion. But that I may not seem to assume too much here, I will ask what has been the usage of

the court of Admiralty, upon subjects of this nature; I will ask, has it, or has it not, in its own practice, conformed to the rules and analogies of the common law? I answer, that in fact it has: and that too in a case where if it had a right of exemption from these rules, it would have exerted it. I allude to the case of the accessory on land to a piracy at sea. It deserves, I think, particular attention. The statute of Henry the 8th, had established the Court of Admiralty in its present form: it abolished the old trial by the civil law, and introduced the trial by jury. The question, as to the accessory, some time afterwards arose: it was indifferent to him where he was tried. He had equally the privilege of a common law trial. With regard to the *corpus delicti*, the piracy committed, it had always belonged to the Admiralty from its original and early jurisdiction. It was one of the native offences of the high seas. It was not a new crime lately brought within its reach by statute. Surely, if there ever had been such an idea as *accessorium sequitur principale*, for the purpose of conferring a right of judicature in contravention to the real locality of the aiding and assisting, that was the time to find it realized in favour of the Admiralty. But what does my lord Coke say upon this subject in the 5th institute: "We find the law of local venue rigidly insisted upon: we find that no venue on the high seas could be ascribed to the acts of the accessory on the land. We find, for that reason, that the accessory could not be tried." And I ask farther how did this accessory at last become triable in this court as he is at present? Did the common law give way? No; the defect continued till it was afterwards supplied by the statute of king William. That it did so continue, is not only apparent from that decision of the common law judges, and the passing of the statute, but I will also prove it from a celebrated judge of the Admiralty court, and writer upon its jurisdiction; I mean a great predecessor of one of your lordships, sir Leoline Jenkins. In the works of that great person, is an argument delivered by him at the bar of the House of Lords, in which he enforces the pretensions of the Admiralty to have its jurisdiction extended as a civil court, so as to hold plea of contracts to be performed on the sea, when the instrument of covenant is executed on the land, as in charter parties and the like. But this is not insisted upon to be the then jurisdiction of the court; it is only an argument that locality ought to follow the nature of the cause. In the same writer are also to be found two charges to the grand jury, delivered by him in this very place, when presiding at the Admiralty sessions; they are most masterly and correct compositions, enumerating all the topics which might be submitted to the inquiry of the grand jury. The direction given is, that they are not to inquire of what is done on the land within the body of any county: in

another place he says, they are to inquire if any on the water, or the high seas, shall commit such and such offences.

Not a word occurs as to offences committed partly on the land and partly on the seas: I am, therefore, I think intitled to lay down this broad and general proposition, that it was thought clear at this time, that over offences circumstanced similarly with the present, the Admiralty had no jurisdiction. And the authority of sir Leoline Jenkins, besides his name, is the higher, because he is known to have been a most strenuous assertor of the jurisdiction of his own court.

I come now to the statute of king William: it amended and enlarged the statute of 28 Henry 8th. Not generally, but in the case of piracy alone, and I beg your lordship's attention to the identical words of it; they are these, that "if any person shall, either on the land, or on the sea, aid or assist any person to commit piracy upon the seas, and such person shall thereupon commit such piracy, the person so aiding and assisting, either on the land or on the sea, shall be adjudged to be an accessory." The statute then goes on to say, "that all such accessories to such piracies shall be tried according to the statute of 28 Henry the 8th, as the principals of such piracies." Here your lordships perceive a very marked and studied phrase. The rule of the common law is in distinct terms abolished: and the offence of the accessory is made in the most unequivocal manner to follow that of the principal for the purposes of trial.

I have now farther to beg the particular attention of your lordships to the words of the statute of 11 Geo. 1st, on which this prosecution is founded. They are, "That if any owner, master, mariner, or officer, belonging to any ship, shall, wilfully cast away, burn, or destroy the ship of which he is owner, or to which he belongs, or in any wise procure it to be done, with a design to prejudice any person who hath underwritten a policy thereon, he shall be adjudged a felon." Then follows the clause, out of which our objection immediately arises, "That if any of the said offences, in wilfully burning, casting away, or destroying any vessel as aforesaid, shall be committed within the body of any county, the same shall be tried and adjudged in such courts, and in such manner as felonies done within the body of any county, are to be tried; and if any of the said offences are committed on the high seas, the same shall be tried before such court, and in such manner and form, as by an act made in the 28th of Henry the 8th, is directed for trying felonies done on the high seas," that is to say, the court of Admiralty.

I will now compare the language of these two statutes, and let any man say whether the contrast is not palpably striking. What does this act of Geo. 1, do? It makes the de-

struction or casting away a ship in the manner imputed to the captain, a felony, which (I take it) it was not before, either at common law nor by the rules of the civil law. It makes the causing and procuring it to be done, also a felony; the declaration of the offence is clear; but what is said about the jurisdiction which is to try it? It is said that such of these offences as are committed in a county shall be tried there, and such as are committed on the high seas, in the Admiralty. But what is to be done when the offence is transacted in neither jurisdiction exclusively? Does the statute abolish the rule of the common law in the manner in which the statute of king William distinctly did?—Does it provide for the alternate place of the offence and declare that it shall make no difference? Does it say if the causing and procuring be on the land, and the sinking the ship on the sea, the Admiralty shall have the jurisdiction? Does it say, if the offence shall be done partly on the land and partly on the sea, or whether it shall be done on the land or the sea, the trial shall be here? Is there one word in the statute applicable to the event which has happened? If there be, there is an end to our objection, and it has been unpardonable in us to dispute what is manifest. But if there be not, why is not the rule of the common law decisive? Perhaps we shall be told that such precise words as are to be seen in the statute of king William are not necessary; perhaps it would be said, that the legislature must have meant to embrace this offence, and that it falls within the act by construction, though it may not fall within its specific expressions. To this I answer, that if the intention and meaning of the legislature be the ground of the prosecution, I should be very ready to go at large into that question; but I am afraid that the settled rules of the criminal laws, unfortunately, perhaps, in the present instance, will soon put an end to this pursuit. I will, then, beg to remind the Court of an axiom which your lordships will recollect as falling from the lips of every judge in every criminal court, namely, that penal acts cannot be enlarged by what is emphatically termed "*intendment*." I beg leave farther to say, that I apprehend it is not properly the duty of the prisoner, or of his counsel, to prove a negative; that is to say, that he is not obliged to make it out that the framer of an act did not or could not contemplate his particular case; but that the only criterion, whether they did or did not, is whether they have in terms, or at least intelligibly expressed a description of it, for I take it, there is no such thing as the moral mind of the framers of an act in opposition to their legislative mind; the force of a statute is the legislative text of it, and not what passed in the thoughts of the legislature. If this be, as I am sure it is, a fundamental axiom, in expounding a penal law, I will apply, to this statute of Geo. 1, two questions, first, I will ask, has it, in plain terms, described an offence

like the present? No man will say it has. Secondly, I will ask, has it even a distant and remote allusion to it? Has it, in any dark and ambiguous manner, supposed the occurrence of it? Is there one word or expression in the act which a plain reader would call doubtful? Is there any point of grammatical difficulty? To all this, I beg, decidedly, to say, no; for if this act is to be read in this court, as it would be read out of it, and as if the same passages were found in any other volume besides the statute book, it has not a syllable which can touch the prisoner from one end of it to the other. If the word *offence* means, in this act, what it means out of it, it would be absurd to say that the prisoner Easterby had *offended* on the high seas; but the criticism to be bestowed on this act is not of this common sort; it is of a very singular species, it does not solve any verbal doubt or ambiguity, which any man will say does arise out of the word *offence*, but it first supposes that the legislature had such a case as the present under their view, and having taken that for granted, it then comes to this conclusion that an *offence* on the high seas is synonymous with an *offence partly on the land and partly on the sea*, because it has, somehow or other, established it as a preliminary fact, that the legislature did contemplate the latter transaction as well as the former, and meant the same expression to be used synonymously for both purposes. According to this criticism there never will be a *casus omnisus* in any statute; and the legislature never can fail to provide for what, perhaps, does not come within their imagination. My understanding of the intention of the legislature, which I contend for as the sound and true one is this, that it clearly has provided for one *mode* of this offence, and as clearly has not provided for another *mode* of it. It has contemplated the principal and accessory as carrying their project into effect in one and the same jurisdiction; but it has forgotten that the *owner* would not be sailing along with his vessel. It has forgotten that he might remain at home while his confederate was sinking the ship at a very great distance on the high seas.

There remains yet another point of view in which the statute should be placed, in order to see whether it has a bearing on the prisoner. My learned friends on the other side may possibly say, that I am not correct in my legal definition of the crime which it creates under the words *causing and procuring*, and that the crime of the *owner* is not consolidated with the crime of the *captain or mariner* who sinks the vessel in the manner of accessory and principal. It may be said, that the owner's offence in forming the fraudulent scheme is a substantive offence, and may exist independently of the other; and, upon this supposition, it would not be an offence partly committed on the land and partly on the high seas; should the prosecution be put

upon this ground, it must fall immediately. Certainly, it must be allowed, that an act of parliament, potentially speaking, may form a species of offence anomalously, and declare that conspiring and agreeing to accomplish a wicked purpose, shall itself be the consummation of a felony, independently of the thing done, and whether it be done or not; but has the legislature so framed this offence? To impute such a meaning to the statute would be a construction of it, setting at defiance all the precedents in the criminal code; for, I venture to assert that no instance of the sort can be cited from the whole catalogue of common law or statute felonies. One example, I know does exist, and one only, of a species of crime so constituted; but, a crime of a much higher class, and the unequalled enormity of which has withdrawn it from all comparison. I allude to a conspiracy against the life and government of the sovereign; we know, that the intent or project is, itself, a *corpus delicti* in high treason. And, if a resemblance can be drawn from thence, let us see what the features of it are; let us, in argument then, suppose the *causing and procuring* to be a *corpus delicti*, independently by itself, like a traitorous conspiracy. How will you localize this *corpus delicti* on the high seas? that must some how be done, for if one principle is to be borrowed from the treason law, the whole must be taken with it, and there is nothing more settled than that, in whatever county a treasonable purpose or intention *alleged* to exist in the same county, it must be proved to exist by some circumstance or overt act, done in that very county. It is true, that any one circumstance, slight or trivial as it may be, is proof enough. Upon the trial of lord Preston,* who was taken at Gravesend, in Kent, with dispatches for the enemy, and indicted in Middlesex, he objected, before lord chief justice Holt, that there was no proof against him in that county; but, it was held, that his taking a boat, in order to get down the river Thames, was a sufficient overt-act in Middlesex. This is intelligible, and I feel myself constrained to say that, had the prisoner Easterby, when he was at Deal, taken a boat and gone on board the brig, I should think him now in a most fearful state; not upon the ground on which I am now considering the point, but because it would then have been for the jury to say whether he had not gone on board to concert measures with the captain which would have been a *direct aiding and assisting on the high seas*, and would have made him an *accessory* in the same jurisdiction where the vessel was sunk. But what is the evidence as it now stands? To say that the conversations between Easterby and the captain, the unshipping part of the cargo, and the other parts of the transaction, before the ship sailed from London,

* Anti Vol. 12, p. 645.

are overt-acts or things done on the high seas, is what imagination cannot very well comprehend; and as to carrying them there by the *allegation* of the record and the contrivance of a fictitious venue, such a thing was never heard of even in high treason; it might as well be said that if a man murders and robs in one county, he has murdered and robbed in any county of England, where the prosecutor thinks fit to aver the commission of the crime.

My lords, I beg pardon for having been insensibly drawn into such a length of discussion, at this late hour of the day. But it has not been without a motive of personal respect to your lordships, that I have taken the liberty to argue the point so much at large.* Deriving no light from the printed note of Pow's case (the only instance, I believe, of a prosecution under this act), I thought it my duty, in private, to consider the subject extensively. The result of that investigation, not the suggestion of the moment, made me feel an anxiety to address your lordships.

I beg leave, in one word only, to revert to the proposition I sat out with stating. I have shown, I think, beyond all doubt, that the Court of Admiralty has no contradictory rights, usage, or peculiarities of its own; no principles in its fundamental structure, which exempt it from the influence of the common law. I have shown, on the contrary, that it is constituted on the same local basis, and subject to the same legal rules as every other criminal court. I have shown farther, as I humbly conceive, that the question which has now arisen on the act, under which the prisoner is indicted, has, virtually speaking, been already decided; and is, in truth, by changing names, a repetition of that which arose formerly on the statute of Henry 8th. And unless it can, by some ingenuity, be made out, that there ought to be a different decision in two cases exactly parallel—Unless it can be shown that the judges were wrong, when they declared they had no power constructively to enlarge that statute—your lordships will, I hope, say, that you have no power constructively to enlarge this.

Mr. Garrow.—I could not help feeling a wish that I should have had an opportunity of hearing at greater length, and when less exhausted, my learned friend's speech, as a reading upon the jurisdiction of courts. It seems to me, that for any other purpose, a great deal of it is rather a waste of my learned friend's powers; for, till we come to the statute of 11 Geo. 1st, we have really been consuming, without much end, a great deal of the time of the Court.

My learned friends, each in their turn, have disclaimed arguing before your lordships, and have cautiously abstained from bringing within your view, that if we are proceeding in a jurisdiction in which there is no right to

implead the defendants, there is no jurisdiction in which this case can be inquired into. A great deal of the time of my learned friends was unnecessarily consumed, because it is not my intention, and I believe, I may venture to say, it is not the intention of any of my learned friends, whose very able assistance I have upon this occasion, to contend, that if there is no other jurisdiction which can reach this offence, that, for that cause, and that alone, your lordship should stretch your arm to embrace it: as little do I mean to contend that your lordship ought to extend your jurisdiction to it, because you feel it would be politic that you should do so, or that it would be extremely convenient that the Admiralty jurisdiction should have cognizance of this case. I am perfectly ready to state, and to agree with my friends, that unless you find your authority in the plain language of the last statute, to which my friend Mr. Erskine at last brought himself, unless you find your jurisdiction there you have it no where; but while they have been stating their objection, they have found it impossible to conceal from your lordships, that unless this court has by that statute jurisdiction, there is, upon the evidence now disclosed, no other jurisdiction that can, by possibility, inquire into this offence. I am not in the condition of my friends, afraid of stating that to your lordships; on the contrary, I state it distinctly, as resulting from all the evidence, that it is my opinion, that unless this court has jurisdiction, no court has; but I do not, therefore, ask your lordships to say you have therefore jurisdiction; but I would join my friend Mr. Wetherell, in desiring your lordships not to come to a hasty conclusion upon the subject, lest there should be a failure of justice, from your lordships' disclaiming a jurisdiction, which it may, upon more mature consideration, be found no other court has, but that this court has.

But, if there is a doubt which we are called upon to remove, after the course that was taken in the case of Pow, to which Mr. Wetherell directed your lordships' attention; perhaps it would be more convenient if your lordships, instead of hearing us at length, when we are so exhausted, and hearing my friends afterwards in reply (if there is doubt enough upon the question to raise an argument upon it) would take the same course as was taken in the case of Pow, for the jury to find the facts, and refer the question of law to the consideration of the judges.

Lord Ellenborough.—We wish to receive all the information we can. We think the point of too great magnitude to decide it either way here, particularly as it has been once before the judges and received no decision, and it is a point that ought to receive a solemn decision by the judges of the land. Without saying more at present, I think there certainly is reasonable doubt enough upon the construction of the act to serve the point of law for consideration elsewhere.

* 1 Leach 54—2 E. P. C. 1099.

A conversation took place between the Judges and the Counsel (which being carried on in a low tone of voice, was not distinctly heard by the reporters) respecting the mode which should be adopted to give the prisoners the benefit of this objection, whether by a special verdict or by a case: the latter course was preferred, lord Ellenborough observing that the prisoners would have every advantage by a case, which they could have by a special verdict.

EVIDENCE FOR THE PRISONERS.

(For *Codling*.)

Captain *Amos* sworn.—Examined by Mr. *Fielding*.

You were commander of the Revenue Cutter, that went out, and saw this ship off Brighton?—I was.

Will you inform the Court, whether captain *Codling* did not yield you all the assistance that he could, that his vessel might be towed in, when you had got your hawser fast?—I will tell you what little I know of the business. About half after seven o'clock—

Mr. *Fielding*.—No; you will have the goodness to answer the questions which are put to you?—Captain *Codling* came on board the vessel, and told me he had had a misfortune; that his vessel was sinking: before he came on board I had seen it, and sent my boat with an officer and six men; that was the first boat that was there; they hoisted their colours upon her side immediately, and took her in tow.

Did not captain *Codling* give every assistance when you saw him?—In ten minutes after that captain *Codling* came on board in the Cutter's boat, I asked him if he was captain of that vessel; he said, he was; that he had had a misfortune; that his vessel was sinking.

Did he not give every assistance, and seem as anxious for the vessel to be preserved as he could be?—Yes, for every thing that I saw.

Captain *Amos* cross-examined by Mr. *Garrow*.

At this time was not the vessel completely water logged?—She was completely on her side.

State any one thing he did towards assisting you in getting her on shore?—He came up to me in the Brighton boat, and went back again after he had told me the circumstances, and wished me to get up with the cutter as soon as I could; but being calm, it was a long time before we could get up with the cutter; as soon as we did get up, I made a rope fast to her as soon as my vessel was upon her; being a heavy vessel, she came up, righted herself, and then went down.

What act of any sort or size did captain *Codling* do after he came up?—That is all I saw him do, because I only saw what I tell you.

Lord *Ellenborough*.—Could he then have done any act for the saving of the ship?—I do not know that he could.

Mr. *Thomas Mankin* sworn.—Examined by Mr. *Fielding*.

How long have you known captain *Codling*?—About twenty-five years.

What character does he deserve, according to your knowledge?—He always bore a good character, and was reckoned a very good seaman.

Mr. *George Pearson* sworn.—Examined by Mr. *Gurney*.

What are you?—A mariner.

Have you been a captain?—I have.

How long have you known Mr. *Codling*?

—From an infant.

What character has he borne the whole of his life?—A very good one, to my knowledge.

Mr. ——— *For* sworn.—Examined by Mr. *Gurney*.

Where do you live?—At New Crane.

You are a fitter of ships?—I am concerned in shipping.

How long have you known captain *Codling*?—Twenty-three or twenty-four years.

During that time, what has been his character?—One of the best of characters: I never heard any thing against him in my life.

John *Sedgell* sworn.—Examined by Mr. *Gurney*.

What are you?—A publican.

How long have you known captain *Codling*?—About fifteen years; he has always borne the character of a very humane and a very respectable man.

Has he borne the character of an honest man?—Always.

Mr. *John Morgan* sworn.—Examined by Mr. *Gurney*.

How long have you known captain *Codling*?—Twelve or fourteen years, as near as I can state.

What has been his character for the whole of that time?—I never knew any thing of bad character of him in my life.

Has he maintained a good character?—To the best of my knowledge he has; I never heard any thing to the contrary.

Mr. *Robert Charlton* sworn.—Examined by Mr. *Gurney*.

Where do you live?—At Newcastle-upon-Tyne.

How long have you known the prisoner *Codling*?—Nearly thirty years.

During the whole of those thirty years, what character has he maintained?—Always a very good one.

Mr. Thomas Locke sworn.—Examined by Mr. Gurney.

How long have you known captain Codling?—I have known him twenty-five years, and have been perfectly well acquainted with him fifteen years. I have been in different parts of the world where he has been; and I always found him a respectable man as a master of a ship.

Mr. Richard Leveridge sworn.—Examined by Mr. Gurney.

How long have you known captain Codling?—Twenty years: he has been a very good kind of man during the whole of that time, to my knowledge.

———— Ingleton sworn.—Examined by Mr. Gurney.

For what length of time have you known captain Codling?—Fifteen or sixteen years. I always considered him a good kind of man, as far as I knew of him.

———— Miles sworn.—Examined by Mr. Gurney.

How long have you known Mr. Codling?—Twenty-four years.

What is his character?—Very fair. I never knew any thing of him but what was right and just.

(For Reid.)

Mr. Nathan Smith called again.—Examined by Mr. Sergeant Bayley.

You live at Brighton?—I do.

You saw the Adventure after she was sunk?—I did.

Did you see Mr. Reid that day?—I did. I saw him come on shore.

Did you make any proposal to him about raising her?—I told him when I first saw him that I would forfeit an hundred pounds if I did not get the vessel safe on shore; he said if that was the case, I should meet with a handsome reward from the underwriters.

Did your people afterwards assist in bringing the ship ashore?—The Brighton men did all of them.

Did you supply tackle, or any thing for that purpose?—I did; I supplied them with a rope and tackle, without which they could not have brought her on shore: they must have had some other, if they had not had mine.

Mr. Nathan Smith cross-examined by Mr. Garrow.

I take it you were a stranger to Mr. Reid before this?—I never saw him before.

How happened it you entered into this conversation with him about saving the ship?—There were certain appearances which I thought not right; and I was anxious to get her on shore.

That was the reason of your making that observation?—Yes.

Why did you make it to Reid in particular?—He was the first man I saw: from him I went to the captain.

He told you that if you could do it, you should have a handsome reward from the underwriters?—Yes.

Had you heard of her being underwritten before he told you?—No.

Did he tell you what his station was?—He said he had lost his all; that all he had was on board; and he appeared to be deeply concerned; his eyes were swelled, and there were tears visible in his eyes.

He did not tell you what was his station on board, did he?—I think he did not.

Mr. Thomas Keene sworn.—Examined by Mr. Gurney.

What are you?—A surgeon in his majesty's navy.

I believe you have long known Mr. Reid?—I have; he was purser of his majesty's ship the Queen.

Is he now a purser in the navy?—He is.

Do you know how long he has served in that character?—Right or ten years, or more.

How long have you sailed with him in the Queen?—Between three and four years.

You, having been his medical adviser on board that ship, know whether his hearing is or not good?—It is very much impaired, and has been for a long time, for many years.

Having known him so long, you can tell us what character he has maintained?—I never knew a better character.

Admiral Bligh was called, but did not appear.

Mr. Garrow.—I can state for certain that admiral Bligh was here yesterday; for he asked me when the trial was to come on.

———— Miles called again.—Examined by Mr. Gurney.

You live at the Ship inn at Brighton, I believe?—I do.

Are you the master of the Ship?—No; superintendant for the benefit of the family since the death of Mr. Hicks.

Do you remember Mr. Reid coming on shore after the Adventure sunk?—Perfectly well.

Do you remember his bringing from on board any watches?—I do; he put them under my charge.

For what purpose?—It was in a room where there was not a lock and key; he gave them to me for security. I gave them up to Mr. Reid again.

In whose presence?—I believe Mr. Easterby was in company.

Was Mr. Douglas there at that time?—I cannot say.

Did he put them in your charge avowedly as equipping out of that ship?—He told me so. He made no sort of secret of it?—None in the least.

Mr. Garrow.—When was it?—I think on

the Sunday ; it was the day he came on shore ; the eighth of the month.

Mr. Gurney.—Do you remember the number of the watches?—Twenty. I had known Mr. Reid long before this, in the West Indies.

What character has he maintained during the time you have known him?—A perfectly good one.

(For Macfarlane.)

General Morrison sworn.—Examined by Mr. Knapp.

Do you know Mr. Macfarlane?—Yes.

How long have you known him?—In the year 1798 he was appointed lieutenant in my regiment, in the South Middlesex militia.

How long have you known him?—From that time down to the present.

What has been his general character for honesty?—I know nothing of that ; as an officer, he did his duty : when there was a vacancy, I appointed him a quarter master.

Of course you had a good opinion of him?—Certainly, or I would not have recommended him. I recommended him for an adjutancy to lord Titchfield.

Mr. James Kilpatrick sworn.—Examined by Mr. Knapp.

How long have you known the prisoner Macfarlane?—Five years.

What has been his character during the time you have known him?—A very good one ; I have had dealings with him all that time, and always found him very correct and very honest.

Captain Jarvis sworn.—Examined by Mr. Knapp.

How long have you known Mr. Macfarlane?—Since the year 1799.

What character has he maintained for honesty from that time down to the present?—As for character, I do not know ; he was always reckoned a good officer, and discharged his duty as became an officer.

Mr. James Mason sworn.—Examined by Mr. Knapp.

In what situation are you?—I was paymaster to the regiment.

How long have you known Mr. Macfarlane?—Upwards of five years.

What has been his character?—I looked upon him to be as honest a man as I had ever any dealings with.

Mr. ——— Stanton sworn.—Examined by Mr. Knapp.

How long have you known Mr. Macfarlane?—Nearly three years.

What has been his character for honesty?—The best character a man can have.

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Captain Musseron sworn.—Examined by Mr. Knapp.

You are in the Tower Hamlets militia?—Yes.

How long have you known Mr. Macfarlane?—Three years. I always found him a very good officer, and always thought him a very honest man.

——— Forsyth, Esq. sworn.—Examined by Mr. Knapp.

How long have you known Mr. Macfarlane?—Between two and three years ; during which time he always acquitted himself as a very honest man he was an officer in the same regiment I was.

You are a magistrate, I believe?—I am.

Mr. Richard Ivory sworn.—Examined by Mr. Knapp.

Where do you live?—In Whitechapel Road ; I deal in spirits.

How long have you known Mr. Macfarlane?—Seven or eight years past : his character has been uniformly good ; he has ever made his payments very regular.

Mr. ——— Boydell sworn.—Examined by Mr. Knapp.

How long have you known Mr. Macfarlane?—Seven or eight years ; I always found him a good neighbour, and an honest man.

Mr. Thomas Hamilton sworn.—Examined by Mr. Knapp.

How long have you known Mr. Macfarlane?—Five years : he has had a universally good character during that time, a most respectable character. I would at any time trust him with a thousand pounds.

——— Miles called again.—Examined by Mr. Knapp.

You have known Mr. Macfarlane?—Yes, better than five years, in the West Indies, and in this country.

What has been his character for honesty?—Perfectly good.

Mr. Erskine.—On the part of the prisoner Easterby, I mean to take an objection with regard to the ownership of this vessel. The last documents that were given in evidence on the part of the prosecution, were an abandonment of the ship by Macfarlane, and an abandonment of the cargo by Easterby and Macfarlane, jointly. I mean to prove that the ownership of this vessel was formerly in a person of the name of Geddes. I shall produce a bill of sale from Geddes to Macfarlane ; I shall then produce the register of Macfarlane. It will then be necessary, in order to establish an ownership in any body else, to take the property out of him ; and I shall show an act of ownership by Macfarlane of the most solemn kind ; namely, a conveyance of a moiety of his share of the ship ; but

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the register will bring the property out of Geddes, the former proprietor, to Macfarlane, and there it rests by the register. I shall produce a witness from the Custom-house, to state that that is the last and only existing register; and your lordship will have the goodness to save that point along with the other. If the judges shall be ultimately of opinion that this is the only legal proof of ownership, as the acts that have been proved are equivocal acts, then I shall be entitled to the benefit of it for Easterby.

Lord Ellenborough.—You will have the full benefit of every thing.

(Evidence for Easterby).

Mr. Thomas Sentence sworn.—Examined by Mr. Erskine.

Have you brought with you from the Custom-house the entry of the registry of this ship?—I have.

Produce the earliest register you have in point of date, the register of Geddes, of the 12th of June 1800?

[The witness produced it.]

Mr. Garrow.—It appears by this that Geddes was at that time the owner of the ship Adventure.

Mr. Erskine.—You have there the register by Macfarlane. Is there any other register since that?—There is not any.

Mr. Garrow.—Not in your office?—Not in my office.

Mr. Garrow.—You have put in the original parchment register. You are looking now at another document?—Yes; the register book.

You have not now the original register. What is that book?—The book of entry of registers.

Transcribed from the original registers, executed by the parties?—Yes.

It is not the original executed by the party?—No it is not.

Lord Ellenborough.—Is not that the original in the book which you produce?—Yes, we understand so; and the other is a certificate.

Mr. Erskine.—That book is the original entry, as described by the act of parliament; and then you give out to the parties this certificate of that registry?—Yes.

And there is no other register of that ship Adventure, since that time?—There is not.

Mr. Garrow.—There is no subsequent entry in your office?—There is not.

Mr. Erskine.—The ship is of the port of London?—Yes.

And that is the only existing register of the ship Adventure in the port of London?—It is so.

[It was read.]

"Certificate of British Registry.

No. 250, E. D. H.

"In pursuance of an act passed in the twenty-sixth year of the reign of king George the third, intituled, an act for the farther increase and encouragement of shipping and navigation, William Macfarlane, of Bethnell Green, merchant, having taken and subscribed the oath required by this act, and having sworn that himself is sole owner of the ship or vessel called Adventure, of London, whereof William Codling is at present master and that the said ship or vessel was built at Exmouth, in the county of Devon, in the year one thousand seven hundred and ninety-seven, as appears by a register, No. 242, granted at London the 12th June, 1802, now delivered up and cancelled; and Thomas Peters, surveyor for the act of navigation, having certified to us that the said ship or vessel is British built; has one deck and two masts; that her length from the fore part of the main stem to the after part of the stern-port aloft is fifty-seven feet seven inches; her breadth at the broadest part above the main wales, nineteen feet one inch; her height in hold, eight feet four inches; and admeasures 77½ tons; that she is a square sterned brigantine; has no gallery, and no head; and the said subscribing owner having consented and agreed to the above description and admeasurement, and having caused sufficient security to be given as is required by the said act, the said brigantine Adventure has been duly registered at the port of London.

"Given under our hands and seals of office at the Custom-house in the said port of London, the Sixteenth day of June, one thousand eight hundred and two.

"18th June, 1802,

"Entered in the secretary's office.

"J. BURRELL."

Mr. Erskine.—This was a few days before their joint execution of the power of attorney to Reid.

Lord Ellenborough.—Does it appear to be assigned from Geddes to William Macfarlane?—It does, by an indorsement on the back of it.

Lord Ellenborough.—Has this continued in your custody from the period of its date?—It has.

Mr. ——— Yeates sworn.—Examined by Mr. Witherell.

Do you know the prisoner Easterby?—Yes.

How long have you known him?—About eighteen months.

Before that time, I believe he lived in the North?—I do not know.

What has been his character during the time you have known him?—I have not known any thing particular of him; but I have known nothing but integrity and good conduct, as far as I have known of him.

SUMMING UP.

Lord *Ellenborough*.—Gentlemen of the Jury:—This is a case which from its magnitude and importance, and the various parts of proof it necessarily embraces, has unavoidably occupied a very large portion of your time, and I am sorry to say that it must necessarily occupy a considerable portion of your time yet farther: no more however than is necessary for the purposes of justice shall be occupied. But it is necessary to consider the mass of evidence laid before you with great attention to see how it is applicable to the allegations upon the record in this indictment, and to the particular charges against the individual prisoners.

Gentlemen, no part of the time which has been occupied has been wasted; for it was necessary to occupy great part in legal proof, and the discussion upon legal topics has been very properly gone into by the counsel for the defendants, inasmuch as they are all of importance, and some of them points of considerable novelty, and fit to receive the consideration which will hereafter be given them. At present the case may be stripped of all the points of law that have been the subject of discussion and argument before you; and you may for the present assume, that this Court has complete jurisdiction on the question you are now about to decide. The learned gentlemen who have taken the objection on the part of *Easterby* and *Macfarlane*, and also on the part of *Reid*, will have the full benefit for their clients hereafter of any such objections arising out of the evidence on the part of the prosecution.

This is an indictment which is preferred against *William Codling* and *John Reid*, as principals concerned in the destruction and casting away of a ship called the *Adventure*, by boring holes in her on the high seas, and by that means effecting the casting away and destruction of that ship, with intent to prejudice the underwriters: and *Macfarlane* and *Easterby* are charged in the nature of accessories before the fact, with having procured such casting away and destruction of the ship, and which fact of their procurement stands upon evidence of inference from their conduct and conversations before and subsequent to the destruction of the ship.

Gentlemen, in respect to *Reid*, who is charged with *Codling* as being the person immediately effecting the destruction of the ship, by casting her away—in order to find him guilty (if in the result you should think he is so), you must, be satisfied that he was present at the time when the destruction of

the ship was effected, by boring these holes in her—that he knew what was doing, agreed to the act done, and assisted in the doing of it, by neglecting—and that for the very purpose of such assistance—to exercise the function he bore, and the duty he ought to have exercised in the prevention of that mischief whilst it was doing, and for having so far forth covered and facilitated the completion of the act. Unless you are of opinion that he knew and agreed to what was doing, and by a wilful and purposed dereliction of his duty on board, and which he owed his employers in the care of their cargo, at least assisted in the execution and completion of the act of destruction which was done, you will not find him guilty, whatever other circumstances there may be which give an unfavourable impression of his conduct. You must at any rate be satisfied of the circumstances which I have stated, in order to find him guilty.

It will be better for me, in stating this vast mass of evidence, to make the observations which arise out of it as I go along, that you may be enabled to apply the evidence as it may tend to prove the original plan and conspiracy of the parties *Easterby* and *Macfarlane*, to procure the destruction of the ship for this fraudulent purpose, supposing such a plan and purpose to be made out by the evidence you have heard, and which I am about to recapitulate. It will be more convenient, I think, to do as I propose, to comment upon the evidence occasionally as I read it to you than to make any detailed observations to you in the outset.

The first witness, and upon whose evidence most materially the case of the prosecution depends,—is *Thomas Cooper*. You are to take him now to be not only an accomplice and a principal in the commission of the crime; a person to whom, although competent, you would not be disposed to give credit; nor ought you do so unless he is supported and confirmed by other testimony; but he does stand before you in a different situation from almost any other person I ever remember presented to a jury as an accomplice; for he is not only not contradicted in any one particular by any one of the vast body of evidence collected from on board his own ship,—and every person has been called to you who filled any function in it, excepting the prisoners *Codling* and *Reid*,—he not only is not contradicted by any of them in the course of their examination, but is not attempted to be contradicted by any witness to disparage his general credit or character; nor do any of the circumstances adduced on the part of the defendants reflect either discredit upon his character or discredit upon the story he has told; and in the very manner of his statement there is something which gives a degree of credit to his statement and story. Therefore, though he stands before you an accomplice, and though he is the very hand that effected the destruction of

the ship, he is as little tainted by the commission of such a crime as almost any accomplice that ever presents himself in a court of justice. No one person has been called to say he would not believe him on his oath; nor is there any motive beyond the promise of looking after a better birth or better situation for him, that seems to have been thrown out as a lure to him, to induce him to act the part which he assigns to himself in this wicked transaction.

Thomas Cooper says he was a seaman on board the vessel then lying below Limehouse: some of her cargo was then on board. John Douglas was then the mate: the crew were, himself, the mate, captain Codling, and two boys. He says, "Storow also was on board when we sailed; we sailed first to Yarmouth; there we took in twenty-two hogsheads of tobacco, some rolls of linen, and fifteen tons of ballast; we proceeded to Deal; but we put back off Aldborough before we got to Deal. Douglas left the ship at Deal, on account of a complaint—as he said, of the rheumatism; he insisted upon leaving it. Storow was left at Deal too, and Reid came on board as supercargo; he succeeded Storow. Coming off in the boat from Deal, the captain told me I must take Douglas's birth; I said I was not capable of it, because I did not understand navigation; Codling said, that as long as I pleased him, that was plenty, or that was enough. We might have sailed from Deal sooner, but the captain said he was waiting for the return of some letters, and did not like the wind; it was not altogether a fair wind, but other ships sailed. We sailed five or six days before the vessel sunk. The captain, when he went from Deal, ordered us to put nothing in the boat but the four oars; I cut two oars to make them lie in the boat; we formerly put lumber and other loose things in the boat, but at this time it was not allowed us so to do; the captain gave us strict orders to have thowls in the boat." He describes what thowls are; that they are a kind of pegs that the oars move by. "There were thowls plenty; I cannot say how many. The captain told me we should not be in her forty-eight hours longer."—Now, unless the captain at that time contemplated the purpose of her destruction within the period of forty-eight hours, by what other means or events (and no other means or events are suggested) were these people to cease to be the crew of this vessel, and not to navigate her forty-eight hours longer? He did not explain his meaning, or say any more at that time; but on Saturday, at ten in the evening (which was the night before the vessel was destroyed, which you recollect happened on a Sunday), he said, "that was the last night we should be in her; he did not think her fit to carry us through the Bay; he did not think her trust-worthy for his life, and why should I? We had not at that time had any foul weather." It is not suggested that any accident had happened

which should have caused him to predict this fate of the vessel, or should have induced him to make these declarations, unless he had a pre-determined purpose to destroy the vessel; and to cover any practices for this purpose by pretences and declarations previously made, that he did not consider himself safe in the vessel. But, however, according to this witness, he soon afterwards plainly and distinctly speaks out his meaning, and orders him to do the act itself, which was to effect that destruction. "I was," he says, "in liquor at the time; we had a keg half full of liquor, which was left out that night; I was sent down several times to mix grog, and I made very free with it. I was walking the quarter-deck, when the captain called me to relieve him at the helm. He went below into the cabin; he came up again, and told me to go down, and I should find an auger lying on the cabin floor; and that I was to take up the hatch of the scuttle, and to bore a hole as close in the run as possible." That is the place in which you find, by the actual production of the wood, that the hole was bored, as he says he was ordered to bore it, and did bore it. Therefore, so far as to the fact of the place where it was done, and the means by which it was done, that is verified by the production of evidence before you, which is incapable of being falsely represented; for you have the very boards of the ship, which you see are bored in the very place and in the manner described. "I went down," he says, "and I found a new auger; it had no handle; the captain had put another auger through the top of it, which served as a handle;" another auger produced to you is of the description this witness states; and there is a hole through which you might put a handle, answering the description he gives of that which was first applied to this business. He said, the captain gave no reason then for not doing it himself. He was examined a good deal on that point, but he did not immediately recollect that the captain had given any reason; he afterwards, however, states, that the captain did give a reason for not doing it, which was, that he was too clumsy to do it. "I told the captain I had bored two holes, and had left the augers in the holes; the captain could have got down; the captain said nothing at that time, but he said afterwards, he was too clumsy to do it." So that the captain assigns this reason why he made use of another person, this Cooper, as his instrument for doing it. There does not appear such apparent clumsiness about Codling's person as to disable him from doing it; but however, so it stands upon the evidence of Cooper, who is certainly an accomplice; but you will consider whether, he is restored to a sufficient degree of credit to entitle him to your belief. In order to his being believed, he should be restored to credit by the general credibility reflected upon his story, by the concurring evidence of other witnesses, in the particulars in which it is capable of receiving

such confirmation; and you should expect that this confirmation should extend to his testimony as it is applied also to the cases of the several other persons at the bar, who are impeached by his testimony. I think you will see there is a great deal of confirmation given to him, as to each of the prisoners individually, by the circumstances respecting them. He says, "The captain said nothing at that time; but he said afterwards, he was too clumsy to do it; this was about ten o'clock, just before he went down. I told him I had bored a couple of holes, and had left the augers in. I said I had bored one with the spike-gimblet; that there were three holes. He made answer, we should let them stand till day-light in the morning. I understood him, that he meant to let them stand with the augers in them till the morning, in the way in which they were bored;" though afterwards it seems as if one was out, otherwise there would not be water running in, as he afterwards described. "On Sunday morning we breakfasted in the cabin; the cabin boy was not allowed to come down, as he used to do, and breakfast in the cabin." In this circumstance he is confirmed expressly by that cabin boy, and by another boy on board the ship. Morris, the cabin boy, was not allowed as usual to come down to breakfast in the cabin, and to get the captain's breakfast for him; they were both excluded. The other witnesses confirm, as far as possible, the story of this witness: "I pulled the augers out of the holes on the Sunday morning, about day-light; I, on that morning, struck a crow-bar through her." That seems to have been the instrument by which the opening was effected, through which such a quantity of water came into the vessel, as occasioned the casting away and destruction of her. "The captain was down in the cabin, at the same time he wanted to find a maul to make a bigger hole, because he thought she did not fill fast enough; I told him there was a crow-bar; he said, that was the very thing, and ordered me to take it; he told me to make a larger hole; *he was down at the time I did it;*" so that the captain was present, aiding and assisting Cooper, at the very time the act was done, which makes it, to all intents and purposes, a commission of the crime by himself, if this evidence is believed; "*he lent me a hand to knock the lockers down, which was necessary to be done, in order to strike the crow-bar through her bottom;*" so that the captain facilitated the making the hole which was to let the water into the vessel, to occasion her sinking. "I struck the crow-bar through the bottom; it went through her, and I never saw it afterwards; the water came in freely, about the thickness of my arm, after the crow-bar had gone through." You saw, gentlemen, the opening, and it tallies with the description he has given; it certainly would let in a column of water about the thickness of his arm, and is in a place where of course the water would flow in with-

out interruption. "He sent me for Reid before I made a hole with the crow-bar; Reid was close by, in bed; he turned himself several times whilst the holes were boring with the auger;" you observe one of the witnesses has stated that Reid was considerably deaf; that is a circumstance proper for your attention, whether it should not induce you to think that he might not perceive and know that this boring with the auger was going on, so near his bed, at the time. It will be for you to say, whether taking this with the other circumstances, he was privy to this act of boring these holes, and indeed, had previously conspired with the other defendants to cast away the ship; "he could not see the holes; but he might," (if he could hear well,) "hear the water running, [as the smallest hole was left open in order to keep the two pumps going, that the ship might appear leaky. Reid was upon deck when I beat the hole in with the crow-bar; but he was permitted to go down to bed again; the boys were not permitted to go down;] it does seem from that circumstance, as if Reid was either not desirous of being present at making the holes, or was not equally intrusted; it is for you to consider whether his acts at this time showed an aversion to that purpose, or he was agreeing to the whole of what Codling and Cooper agreed to, and those by whom you might think those acts in general were ordered to be done. "He was permitted to go down to bed again, the boys were not permitted. When the hole with the crow bar was made, the colours were hoisted:" though the water was coming in, they did not think that a sufficient opening was made to occasion the immediate destruction of the ship, and they did not hoist the colours; but as soon as the hole was made with the crow bar, the colours were hoisted; "the boat was out before that, and all the people in her, I think, but the captain and me; the boat was out before the water was up to the cabin deck; I packed up my things on Friday night." So that this Cooper, who was to do this, and who knew that the ship was to be thus cast away, and who was told that Saturday would be the last night he was to be on board, had packed up his things on Friday night, when the captain said, they should not be forty-eight hours longer in her; but he says, "I did not mention this to any one, by the captain's orders." Why did the captain wish him not to mention this to any one? If he had expected that his ship would be cast away by ordinary perils, he would have mentioned it to every body, that they might have the boat ready to save themselves, when that danger might arise. "The crew were ordered by the captain to take in the sails whilst I was boring the holes;" so that it appears the crew were detached upon an employ that should take off their attention from the boring the holes. "At the time I was occupied in doing that business, the rest of the crew were in a situa-

tion that they could not hear or see what I was doing; they were all obliged to go aloft to take in the sails, excepting the captain and me, and Reid who was in bed; I quitted her about eight on Sunday morning. The boats came up, and asked if we wanted any assistance, because if we did, they could take her in tow, and get her on shore." Now what would have been the conduct of an honest man? he would surely have embraced that offered assistance; he would at least have desired their prompt and vigorous assistance to extricate him from the difficulty which he foresaw sometime before, and which was likely to produce the destruction of the ship; he would not have refused the assistance tendered him. "The captain answered, the ship belonged to him at present, while she swam, and he gave strict orders they should not assist him; that they had no business with her whilst she swam." Now, upon what principle, except the principle of destroying the ship, or for what purpose, except in order to effect that destruction could he refuse this assistance? "The Swallow cutter came up, and took her in tow. After she had taken her in tow some time, she righted and went down. I, and the captain, and Mr. Reid, were on board the cutter when she went down; she went down in consequence of the holes." Now follows a circumstance respecting Reid, to which you will give your attention; "Reid's trunk came on board whilst we were at Deal, and his bed also; I took it in; and the next day the trunk went on shore. I helped it on board myself when it came; it was opened, there was a lock upon it, and a lashing beside; it was full of linen clothes, to the best of my knowledge; I do not know what Reid had left in the ship. We went, when we came on shore, to the Ship inn, at Bright-helmstone. Reid said, at Brighton, to a Welch woman, that he had lost every thing that belonged to him." You see he had sent this trunk on shore at Deal, the very day after it was brought on board; therefore it could not be true that he had lost every thing he had; for he had that trunk and the contents of it, which he had been so industrious to convey on shore, which was taken to a public house, the Yarmouth Packet, from whence it was sent to the Royal Exchange, to be forwarded to London. If he had told the people on board, he had lost every thing, they would know it was not true; but it might induce this woman to believe him to be an innocent sufferer. "Easterby and Macfarlane, the owners, came to Brighton, to the Ship inn, while I was there; I heard no conversation between them and Codling about the loss of the vessel; Easterby asked me where I bored the whole, and what size it was?"

"How was it possible for Easterby to ask him that question, if this man had not told him he had bored holes? and how should he

have thought of telling him this thing, unless it was agreeable to him, and according to his orders? for it is impossible a man should confess to the owner of a ship, that he bored a hole for the ship's destruction, unless he knew it was by his procurement, and he was acting in obedience to the order of such owner. You will see presently the farther observation Easterby makes, when reprehending Codling for doing it in so bungling a manner. "I told him I could not tell him rightly the size; a chisel and some other carpenter's tools were lying on the floor; he asked me if the hole I had bored was about the size of the handle of that chisel; I said thereabouts. Macfarlane was walking about the room. I cannot say whether Macfarlane heard me or not. Easterby bid me get the handle out of the chisel, and sharpen one end of it, in order to plug up the hole, in case she swam on shore. Mr. Easterby told Codling—"Now you will judge whether it could be possible for him to have held such a conversation with Codling, unless he was not only privy to the act, but had, in the language of the indictment, procured it to be done.—"Easterby told Codling, he was a damned fool; he had made a stupid job of it; he might have taken her on the coast of France, and then they might have taken the boat, as it was fine weather, and have taken either shore. When this conversation passed Reid, Easterby, Macfarlane, and I were in the room, and nobody else. Macfarlane was talking with Easterby and the captain, but what he said I cannot tell. He did not speak very loud, but whether they heard it or not I cannot say; they might have heard it. He was talking in the ordinary tone of voice in conversation, and he said it loud enough for Macfarlane to hear. Macfarlane and Easterby ordered the captain and me to go to London together, and to take a private lodging." Here you see Macfarlane and Easterby are both ordering the captain and the person who had bored these holes—who was liable, in case there was any detection, to be brought to punishment,—to go to London, and to take a private lodging. "Easterby said, if I did not keep myself close, I should be under sentence of death." Then Easterby knew that he had done something which deserved sentence of death, or was at least likely to incur it. How could Easterby know that, if he was not privy to his conduct? If he was privy to his conduct, without having consented to it, how could he do otherwise than be the instrument of bringing him to justice? "A place was taken in the coach. Macfarlane booked us both, and paid the passage; and I received a note from Reid, pointing out where I was to go. I was to go to Macfarlane's house in London." Now this might be merely a direction to Macfarlane's house in London, but Reid must be presumed extremely deaf indeed, if he did not hear this conversation. From thence you will infer, whether

he was or not previously acquainted with the intention of destroying the vessel consenting to it, and not only acquiescing and conniving, but actually assisting in it. "I received nine shillings for wages, and Macfarlane gave me a guinea. This was after I gave an account of the size of the hole. I do not know whether the other men were paid their wages. I came to London in the coach with a little boy, who took the captain's place. A gentleman came and stopped captain Codling, and told him he could not go to London." That circumstance is explained afterwards. "He got the boy out of bed to go; the captain went up, and could not find the room where they were; then Macfarlane went up, and I went up, and the boy came down, buttoning up his jacket. We went to the office where the coach was to call; there we waited. Mr. Reid went down along with me to the coach, and Mr. Macfarlane came to me afterwards. I went to town in the coach with the boy; he went to Mr. Easterby's." All these circumstances of his story—his going to the place where the boy was—calling him up on a sudden—the captain substituting him in his place in the coach, are confirmed by other witnesses. "This was about five or six o'clock." It should seem, from the other witnesses, it was nearer towards seven o'clock. "We waited at the coach-office. Reid and Macfarlane were there at the same time. Reid went down with me; Macfarlane came afterwards." So you see Reid is attending with Macfarlane and the other. "The boy went to Easterby's. His name is George Kennedy. He was one of the crew, and, I believe, was apprentice to Storow. When the holes were made and the water came in, one pump was on." This circumstance is confirmed by all the other witnesses; also the looking for the pump gear, and Codling's contrivance that it should not be found, that they should not set two pumps at work, and by any possibility clear the vessel. See what Cooper says, and see how he is confirmed by all the other witnesses on board. "After the holes were made and the water coming in, one pump was on; we did not want to find the other, by the captain's orders. One of the boys went down to fetch the captain's great coat. He came up and told the captain the water was running. The captain told him to go forward, and said it was no such thing; it was only the water in the run. I took hold of the helm, and the captain went down himself, and he said it was only water in the run. He told me to go down, but jogged me when I went down, to say nothing. I came up, and said there was none; it was only water in the run:" that was in the place where it might be. "I went down to my mother's, at Saxmundham, after this was over. I wanted to get a ship, but could not get one. I walked eighty-eight miles to my mother's. I heard, when I got there, that hand-bills were out against me, offering a hundred

guineas reward; and I sent for Mr. Ashkettle, a constable, to my mother's house. I laid the case down to him, in every thing, as I have done to-day, and told him what had been transacted."

He is cross-examined, and then he says he was twenty-four years of age the 7th of last May. He has no doubt that this vessel was sunk in consequence of the holes he made. The captain was at the helm when he made the holes. The captain was with him when he enlarged the hole with the crow bar. That he did not hear of the reward offered for his apprehension till he got to Saxmundham, otherwise he would have surrendered. He says—"I gave myself up that nobody might receive the reward, as knowing what had been transacted. I did not expect the hundred guineas; I knew I had bored the holes; I knew I had done wrong; I trusted to the Almighty, and did not know whether I should be hanged or not. I was brought to town in a post-chaise, and was taken before the lord mayor. I made a disclosure before the lord mayor, just as I have done now, as far as I know." Now if there is any variance between the declaration he made then, and the account he has given of the transaction at any other period, it was open to the defendants to produce the contradiction arising out of these different accounts, but none such is attempted to be adduced. "Not a soul ever mentioned to me yet, my being a witness for the crown to save my own life. I saw Mr. Lavie before the lord mayor. I have never been told yet, I should be admitted as a witness here. I hope the saddle may be set on the right horse. I was shipped at forty-five shillings a month. When Douglas quitted the ship, captain Codling was looking out for another man at Deal, to supply his place as mate. Reid asked me if I would take his birth; I said I did not understand navigation." Now the very circumstance of applying to a man who knew nothing of navigation—to so unfit a person—to be a mate, showed clearly that he did not meditate any actual voyage to Gibraltar or Leghorn, but more probably, that the ship was intended to be destroyed, as Cooper states. "I was shipped at forty-five shillings a month. Reid asked me; I said I did not understand navigation. I packed up my things on Friday night; I got only nine shillings for wages, and a guinea from Macfarlane. But Codling gave me a bran new coat at Brighton; and the captain told me I should not want for a birth, that he would get me a birth. The captain and I left her twice, and we both came on board again, to get her head towards the shore, to make them believe we wanted to get her in shore. When the Swallow cutter came down, we went on board her. The order about the boat had never been given before." That order seems natural enough, if a person wanted to have the boat out on a sudden, that there should be nothing to embarrass their getting her clear. "We then left the ship; the

captain would not let the people have any thing to do with her. I, the captain and Reid, went on board after the cutter had her in tow. The cutter gave every assistance to us. I had no expectation whatever of reward from Codling. I never received any promise of reward from him, but that I should have a better birth, or should never want a birth. I packed up my things on Friday, and said nothing of my suspicions to any body." Upon being re-examined, he says—"I had orders from Captain Codling not to say any thing; the promise of a better birth was the night I bored the holes. I gave the same account before the lord mayor, nearly as now, in writing." If he did not do so, that account can be produced, and he can receive contradiction from it. If he gave no account before the lord mayor, he can be contradicted by proving that he gave no account; but, as no contradiction is offered, we must presume that he has been consistent from first to last. He came up with this officer, to whom he surrendered, conscious he had done a wrong thing; that he had been concerned in a foul transaction, for which he was ready to take the chance of such punishment as might await him.

John Morris was apprentice to Storrow, who went as supercargo in the *Adventure*, as far as Yarmouth: he says, "I went on board her in the river. I know Mr. Easterby; the ship took her lading in the river; I saw Mr. Easterby come to the ship, sometimes in the morning, before and after breakfast, and sometimes in the evening. There was some sugar and tea taken away one evening; but nothing was taken away in the day-time. When Easterby came one evening, he went into the cabin, and got up some parcels of tea and sugar, and got them in the boat; I saw some of them opened; they were stores for the ship's use; they were packed in blue paper, and brown paper; they were not very large parcels; I think they might weigh ten or fifteen pounds. I saw him afterwards; I did not see any thing taken away at that time; some bread and flour and peas, and also a swivel and a keg of paint, were taken out after they had been put on board; they were sent to the *William*, which belonged to Easterby and Macfarlane. Storrow, the supercargo, left the vessel in the Downs; George Kennedy, the other apprentice to Storrow, was on board. Reid came on board in the *Downs*, as supercargo, he brought a bag, a trunk, and a small bale; the trunk was carried on shore by Kennedy and Lacey, whilst we were in the Downs, and never returned." So that it was not true that he had lost all. You find him mentioning something about twenty watches which he produced, but whether he produced them after any discovery was made of them, or whether it was a part only of what was in this trunk, for the trunk certainly held more than these twenty watches—no account is given of the residue of the contents

of that trunk, at least there is no account given of the residue of the contents of that trunk, till after the whole secret of the story was broached. "I generally prepared breakfast; on the Saturday night, about ten or eleven o'clock, my master sent me down for his great coat; it was on one of the cabin lockers; at that time the cabin lockers were all safe, and not broken." You recollect how the cabin lockers were afterwards broken, in order to get at the floor to make the hole. "I took up the hatch scuttle, and I heard the water rushing in." You see a hole had been bored, and this had heard the water rushing in. This tallies exactly with the account Cooper gives. "I came up and told Codling the water was rushing in, and I thought there was a leak." He confirms Thomas Cooper as to that fact. "Codling said there was no such thing, and he sent me forward to the fore part of the ship; we were pumping very often after that, with one pump; there were two pumps on board; we did not try to work the other till four or five o'clock next morning. I knew where the pump gear was; George Kennedy was sent for the pump gear by Lacey, or one of the crew; but the captain hauled him up when he had got one step down the companion ladder; the water was then gaining fast upon the ship; the pump gear of the second pump was got up after a while; by whom it was got up I cannot tell; Mr. Codling ordered me in the boat all the morning, so I cannot tell who got it up; there was no necessity for my being there that I know of; I used to get my breakfast in the cabin, after my master had finished his breakfast, and to help him at his breakfast; but I did not that morning; my master said the mate would do all that was wanted to be done there." So, you see, the captain is industriously keeping every body but Cooper from the cabin, and any place where they might hear the water rushing in. "The mate handed me my tea upon the deck; that is not the place where I usually took it; the crow-bar was on board then, and was lying on the half-deck, Cooper took it from thence, and went with it into the cabin." There was a good reason why he did not let the boys go down into the cabin when this operation was going on. "I do not know where Codling was then, whether he was upon deck or below; I did not go down into the cabin after the crow-bar was taken down; I was not suffered by Codling to go down below." This is a most express confirmation of the story told by Cooper; his story, as far as it can be, in point of fact and knowledge, is confirmed by all the other witnesses. I do not know where Codling was then; we kept pumping with the two pumps all the morning almost. Just after we had all got into the boat but the mate and the captain, then the mate and the captain hoisted a signal." So that it was not till they had all quitted the ship, and its safety was quite de-

perate, and there could be no advantage derived from assistance, that the captain and the mate hoisted the signal. "We had pumped several hours; some boats came off from the shore to our assistance; when the ship had turned over on the starboard side, one of the boats said they would take care of the ship; our captain said they had no business to touch her till he had done with her; they said they would take her in tow, and engage to carry her in. A custom-house cutter came up then; their boat made fast a rope to the top-mast-head, and took her in tow; she righted, and then went down; the top-gallant-mast and top-gallant-head were above water then; Reid then said he wished the ship might sink, as the thieves would plunder her if she got on shore." It appears very difficult to reconcile this declaration to any innocent situation and character of Reid, in respect to the circumstances of this transaction. Why should he wish the ship might sink, if he afterwards lamented that he had lost his all, because the ship had gone to the bottom? Why wish she might sink where she was, in a considerable depth of water, because the thieves would plunder her if she went on shore? If this is not a declaration of such a wish as could them honestly and truly operate upon his mind, and is only reconcileable to a guilty participation in the transaction, it is for you to say whether Reid is not connected with the whole guilt of the conspiracy, from the beginning, by aiding and assisting, in the manner I have before suggested, in the act of the destruction of the vessel. "From the cutter we all got ashore: Reid said, all he had in the world was lost, and he was ruined for ever. We were two or three days before we got our wages; we apprentices had nothing to receive; I did not see the others paid; I only know they had got money; Macfarlane said, one of us was to go up to London; the other was to stay; Kennedy and I slept in one room together; I did not know Kennedy was to go to town that morning; Mr. Codling came first into our room, then Mr. Macfarlane." Now, this is a direct confirmation, in every particular, of the story of Cooper, as to the going for these boys. "Codling ordered the coach for me; we had two or three augers on board; they were kept in the locker on the larboard side of the cabin; the captain came to put me in the coach at Brighton; I went up alone; he told me I was to go back to my master."

He is then cross-examined: he says, "Reid sent his trunk back; I saw it put into the boat; Lacy and Kennedy carried it on board; Reid said, he wished the ship might sink, otherwise the thieves would plunder her."

The other apprentice, who is likewise called, is George Kennedy; he says, "I am an apprentice to Storrow, I sailed on board the *Adventure* on her last voyage; I was on board her at Yarmouth; there was tobacco and ballast taken on board at Yarmouth; I was on board her when she was off Brighton; I was on

board of her in the Downs: Mr. Reid came on board; he brought a trunk with him, which he sent on shore again; I and another boy carried it from the Yarmouth packet to the Royal Exchange, to go up by the London coach." What purpose was to be answered by bringing it on board and carrying it so soon on shore again, one is at a loss to conceive, unless it was, if he had any insurance upon it, that the circumstance of actually bringing it on board might be seen, and, if necessary, proved by some persons, and the same persons might not be witnesses of its being carried again on shore. "Cooper used to sleep forward, in the fore-castle, with the crew; he was, the night before she was lost, in the watch below; Cooper never came below the night she was sunk; he was aft, in the cabin, along with the captain; it was our first watch on deck that night, me, Cooper, and James Welch; the captain came upon deck, and gave me no orders, except to stow the jib; I did so; nobody else came out till we had just done; Welch came up just as we had done stowing the jib; Cooper, at this time, was aft; I was going down afterwards, for the bolt of the pump." Here this witness confirms Cooper again. "Codling prevented me; he took me by the hand, and turned me about, when going down to the cabin; he told me the mate could find them. We pumped every two hours, with one pump; the reason for getting the other pump was, because the ship was filling fast: the captain knew what I was going for; the mate brought up the wrong gear; and the mate said he knew where the gear was; he did not bring it for a great while; he brought up a great pump-bolt, which would not fit it; it was more than an hour before the right gear was brought up, after I offered to go down; I saw him fetch the crow-bar." There is another confirmation of the story of Cooper; indeed, it is wasting your time to point out the confirmation of different witnesses; for there is no one transaction which passed in the view of others, and to which others had the means of access and privy, in which Cooper is not confirmed by those persons. "After the crow-bar had been taken down, the water began to flow in very fast; I took to the boat a little after nine o'clock; the crow-bar was taken down into the cabin, between seven and eight; just before the ship went down, the signal was hoisted; the boats came off when the ship was on her beam ends; captain Codling bid them keep off; he had not done with her; when he had done with her, they might take her." What could he mean by that? that he would wait till she was sinking, so as to be beyond all possibility of being saved by the activity and industry of these men, and then he would call for their assistance when it would be useless. "Reid did not say any thing to the people in the boats, nor me, about the ship; he was crying: he said he wished the vessel might sink, as the people

on shore would only plunder her if she got on shore." Now, what benefit he could derive from the vessels sinking, and how he could be better by having the whole lost and sunk, is inexplicable. "I never went down to the cabin all the night; they would not admit me into the cabin." The obstruction of these lads, the prevention of their going into the cabin, the resistance to getting the pump-gear, as stated by Cooper, is all confirmed by this witness, as well as the other. "I remember the owners came down; I did not hear them say any thing; I was two or three days before I went to London; Mr. Codling called me out of bed early in the morning; he told me I was to go to London; that I was to go to my master; Macfarlane was in the coach-office, where he took our places before the coach came there; that is at a different time; that is at the getting up of Morris.

Upon being cross-examined, he said, "I carried Reid's trunk publicly; Codling came from the Yarmouth Packet public-house with us; Reid told me it was his trunk; he told me so on board and on shore."

John Lacy is then called as a witness; he says, "I was a sailor on board; I shipped myself on board the Adventure at Deal, we arrived off Brighton on the 8th, in the morning; it was on the Sunday morning she was lost; Cooper was the mate of the ship from the Downs to Brighton; his birth was in the fore-castle with the people; the night the vessel was lost, he was up and down in the cabin; when it was his watch below, when he was not upon deck, he was backward and forward in the cabin; the captain said he would keep the helm, and employed us in taking in the top-gallant sails, and hauling down the jib; the mate was in the cabin then; there was only one pump at work at first; the water began to gain upon us at four in the morning; I took the first spell at the pump; there was much the same quantity of water as at two; when the other watch came upon deck, and the captain ordered me to go to bed, and said the other watch should pump her out; George Kennedy called me out of bed about the second pump-gear; John Morris proposed to fetch it; he said he knew where it was; but the captain said the mate would fetch it." It is obvious why the mate should fetch it, because he would be half an hour, or an hour, in fetching it. "I was then called to assist at the pumps; I sounded the well; I found there was about three feet six inches water in the hold, on the weather pump; and it continued to gain fast; we kept both pumps going as well as we were able; we were not able to keep the water under; we continued this till between six and seven o'clock, I believe; we found the water was gaining considerably upon us, and we could do nothing with her; then the colours were hoisted; I soon quitted her afterwards; John Morris and I were in the boat before the colours were hoisted; the captain and mate were on board; all hands

got their breakfast on board that morning; and John Morris, the cabin-boy, was not admitted to do his duty in the cabin as usual." A farther confirmation of Cooper's evidence, that the captain prevented the boy's going down into the cabin; "he said, the mate should hand the boy's breakfast up." Now, for what good reason the mate should be handing up the boy's breakfast, it is impossible to conceive. "The boy used to get his breakfast below; the lockers were all safe and sound when I was last in the cabin; I saw a new chisel brought on board by the captain from Deal; I saw no augers on board, but one I sounded the well with, which was a very small one: I made a plumb of it. The boats which came from the shore asked the captain if they should take her in tow; the captain said, Keep off, I have not done with her yet; she was then upon her beam ends." The witness that follows says, she was not quite upon her beam ends; but he describes her in a situation of great peril. "Then the Swallow came up; they got a hawser upon her; at the first strain of the hawser, she righted, and went down. Mr. Reid, when in the boat, cried, and said he had lost his all; I took one trunk for him from the Yarmouth Packet to the Royal Exchange, at Deal, to go to town. Reid said, in the boat, he wished she might sink, that they might not plunder her. The crew were put into the tap-room, at the Ship inn, at Brighton, except the mate, who was with the captain and owners; Mr. Reid was likewise with the captain and owners. I got paid all my wages by Easterby, and I went to Deal."

James Welch, another mariner, was called; you observe they call all the persons that were on board, so that you have the whole that can be told by every body that was there. Welch says, "I was shipped at Yarmouth, in July; we sailed for Deal; I saw Mr. Reid on board; I had the first watch the night the vessel sunk; I had not been in the cabin that night; the cabin lockers were safe, as they ought to be, when I was there; I went to take something out the day before. The boys used to prepare breakfast for the captain, before that time. When the captain was ready for breakfast that morning, the cabin-boy was not permitted, by any means, to go down; the captain stopped him, and the mate handed him a bason of tea upon deck, up the companion;" a farther confirmation of Cooper, and of what is stated by all the other witnesses. "One of the apprentice boys had the helm. There were two pumps on board, one only was at work the first watch; the water gained upon us; and the second time, at twelve o'clock, there was much the same quantity of water; we could not get the second pump for a long time; the boy wanted to go down to the cabin for the pump gear." The story told by Cooper is confirmed in all its parts; "but the captain would not permit him; he said the mate knew best where it was, and he

would get it. We waited some time for it; we hoisted a signal of distress between six and seven o'clock—that was before she was on her beam ends—some boats came out; the captain and mate went on board twice, after we all left her; the Brighton boats offered to assist us. The first boat that came up to us, said, 'shall we take you in tow?' The captain said, he had not done with her yet; a custom-house boat came up, he said, 'I will take the command of her, I am a king's boat,' and he fastened his flag to the fore-top-mast head; he fastened a hawser to her mast: captain Codling then went on board the cutter; the cutter came up, and fastened a large warp to her; and the weight of the warp sunk her. I do not know what Mr. Reid had on board; but he said, I have lost all my property. I have lost what I worked hard for these twenty or thirty years; he came out of the cabin crying. After he had given two spells at the pump, Reid said, they wanted to plunder her; these rascals were getting along side of her more to plunder her than to do any thing else." Now, it appears difficult to conceive how this language is reconcilable with any honest purpose of saving the ship, discouraging the people from rendering that assistance which might be effectual to saving the ship. "Reid went on board the *Swallow*, and delivered a medicine-box and a lantern to the captain of the *Swallow*. He said to the men that rowed him to Brighton, I have got but two guineas in the universal world, to pay my expenses to London; what you can get, take;" advising them, by this it should seem, to plunder the ship, and to get out of her what they could. "Mr. Easterby came and paid me my wages."

We have now done with the evidence of the persons on board; and, excepting in the single circumstance of the ship being on her beam ends at the time the signal was made, there is not among them, as I recollect, a particle of contradiction, and there is in this no contradiction to Cooper; for he says nothing about that circumstance. We are now coming to the evidence of a person named Storrow; and his evidence is extremely material, inasmuch, as if what he states is true, he proves the foundation of this conspiracy and scheme for the destruction of the ship, combined with another fraudulent adventure, which appears to have been conceived by Macfarlane and Easterby; they appear to have intended to send the ship out upon a voyage to Gibraltar, to have sold the goods there, either by private contract or by public vendue. After this was done, they thought an opportunity might be taken in the Mediterranean to sink the ship, and that the people on board might take a boat and get ashore, and that one half of the bills for the amount of the cargo might be remitted in private letters, and the other half in public ostensible letters, which might be shown to the underwriters as the whole proceeds of the cargo,

and so have called upon the underwriters for a partial loss, when they had got in the private letters the account of the sale of the whole. It is not a great violation of christian charity to suppose, that persons can be guilty of the crime imputed to them by this indictment, when you find them meditating a fraud of exactly the same sort, at an antecedent period, which is stated by this witness, whose credit is not in the least impeached, and whose evidence is not at all attacked.

Edward Storrow, a captain of a ship, says, "I have known Easterby seventeen or eighteen years, I have sailed in his employ as master. Easterby applied to me to sail in the *Adventure* in May last, as supercargo. I became acquainted with Macfarlane in April last; he asked me to become supercargo of the *Adventure*; I had conversations occasionally with Easterby; Macfarlane was a party too in these conversations; one time in particular, and again a few days before the ship sailed. About three weeks before the ship sailed, I was in Mr. Easterby's parlour, at Canada Wharf; Easterby, Macfarlane, and I, only were present; Easterby then broached the conversation; opened the subject; he said that many ships had been sunk, and might be so, to take the underwriters in for their money." There, you see, he entertains in his own mind a project to take the underwriters in, therefore it is not extremely unlikely he should be privy to that which a great deal of the evidence may induce you to suppose him privy to; namely, the directing the destruction of the ship, when you find him discussing the same sort of wicked adventure in terms of approbation; that many ships might be sunk, and had been so, to take the underwriters in for their money. Easterby told me, that he and Macfarlane were jointly concerned as owners of the ship and cargo." So he admits that he and Macfarlane were owners of the ship and cargo.

He is shown the appointment by Easterby and Macfarlane, of Reid to be supercargo of the *Adventure*; he has no doubt it is Easterby's hand-writing.

[His Lordship read the paper.]

You observe, that at the time of these conversations it was intended that Storrow should go as supercargo; he afterwards left the ship at Deal, as you have it in evidence before you. "Three or four days before the ship sailed, Mr. Easterby sent me to dine with him. I went after dinner; I found Codling, Easterby and Macfarlane together. Easterby said, they wished the ship to proceed from London to Yarmouth, and from Yarmouth to Gibraltar; there to sell the whole of the cargo, either by private contract or by public vendue; that after it was sold, they thought an opportunity might be taken, in the Mediterranean, to sink the ship; and that the people might take the boat and get ashore." Here is a plan for doing that

very thing which was afterwards done; it cannot now, therefore, be said, that these persons would not have assented to such a proposition; that they would have detested the mention of it; for here they are contriving and approving the doing this thing, by the means of Codling, who was the instrument by whose means, together with the immediate agency of Cooper, this very thing was effected.—“And that one half of the bills for the amount of the cargo might be remitted in private letters, and the other half in public letters, in order that the public letters might be shown to the underwriters as the whole proceeds of the cargo, and so call upon the underwriters for that part of the cargo which was left on board by the appearance of the letters.” So that they would have made a claim upon the underwriters for that half that it would appear by the letters had been actually on board at the time the ship was lost, when in fact the whole value of it would have been remitted in the private letters. “This was at the time when I was understood to be supercargo for that voyage. The whole of this last conversation passed in the presence of Codling, Macfarlane, and Easterby.” So you have the two owners conferring with Codling for the destruction of this ship; and you have heard the language which was used by Easterby to the captain, in which he reproaches the captain for making so bungling a job of it. You will judge whether he did not approve the act done, so far as the general scheme of doing it was concerned, though he might disapprove, in part, of the mode of its execution; and whether he had not consented to, directed, and procured the act to be done. This is certainly strong and pregnant evidence. It is for your consideration, whether it is or not conclusive evidence of his having procured that destruction of the ship which afterwards took place, and of which, when he was apprised, he only blamed the immediate instruments of its execution, for having done it in one place instead of another. Easterby was the principal speaker in this previous conversation. Macfarlane said occasionally such a thing might be done. Codling was at this time the master of this ship, engaged for the voyage; he occasionally mixed in the conversation, and supposed it might be done; and neither Macfarlane nor Codling objected to this proposed scheme, but each said they thought it might be effected. The witness says, “From the first engagement, I never meant to proceed in the ship at all. The reason why I appeared to do so was to get a former account with Easterby settled. I went from Gravesend in the character of supercargo. I was apprised of the value of the cargo only from the invoices. I had the invoices delivered to me by Easterby; and I delivered them to Easterby, at Deal.” Now, to be sure, this person, although he did not afterwards perform this deed, does appear under some disadvan-

tage, as a man to whom a communication of this sort could be made without his expressing some abhorrence of it. He would not, however, he tells us, go on the voyage; but merely made use of this communication as a means of settling an account with Easterby.

They then proved a notice to each of the prisoners, to produce all the bills of lading of goods stated to be shipped on board the Adventure, and all the invoices and bills of parcels; which notice they gave in order to enable them to give proof, that is, verbal evidence of their contents, with a view to prove thereby that the prisoners did intend the ship should be lost, in order to defraud the underwriters.

Then they proceed to another part of the case: to show that the ship was greatly over-insured; that part of the cargo was withdrawn from on board; and other goods not put on board, as they should have been according to the manifest; that they were kept back in the private houses, in the private custody and possession of each of these two owners; that is the next branch of the case.

Storow says, “The invoices in my possession amounted to about 9,000*l.*; they were of goods that had been shipped before our arrival at Yarmouth. I proceeded as supercargo to Yarmouth. I went to the Downs in the ship; I saw Easterby at Deal; there I finally quitted the ship. Reid succeeded me as supercargo, as it was represented to me. I did not see Easterby at all on board the ship, from the time of the ship's leaving London. I delivered up all the invoices at Deal, to Easterby.” He is shown an intercepted letter from Codling to Easterby; he says it is Codling's hand-writing. This is a letter which Codling wrote to Easterby after he got to town; the particulars of his coming up to town are stated in a subsequent part of the evidence: “Sir, I arrived in London about a quarter before nine in the forenoon, but shall not get any conveyance before to-morrow morning; I thought it most prudent to take the first conveyance to Colchester, which is twenty miles from Harwich.” You see he was to get out of the kingdom; and you recollect Easterby said to Cooper, that if he staid, he would be under sentence of death; and that they were both to go up to town and conceal themselves. “I leave London at half past one in the afternoon. On my arrival there”—I suppose that means at Harwich—“I shall inform you of my proceedings. I hope I will succeed to save the packet, or bye-boat, by your orders, or a collier. I shall forward my journey with dispatch.” So that he was ready to seize any mode of conveyance. If he could not get into the packet, he would get into a bye-boat or a collier; he would seize any of these modes of conveyance to get out of the kingdom. “On my arrival I shall inform you. My respects to Mr. Reid; and conclude from our unfor-

tanate business, William Codling. London, August 12, 1804." Directed to Mr. Easterby. The letter shows the hurry and expedition with which this person was getting out of the kingdom, in consequence of their orders.

John Blackett, firm the son of Mr. Blackett a policy broker, says, he knows Macfarlane's hand-writing. He is shown the appointment of Reid as supercargo; he proves Macfarlane's signature to it.

Captain Robert Douglas is the next witness. He was, you recollect, sent down to Brighton, by the underwriters, in order to see the situation of the vessel, as they then suspected that something improper had been done. He says, "I got to Brighton on Tuesday, the 10th of August; I saw the Adventure; part of her mast only was above water. I went on shore to Easterby and Macfarlane; I met Easterby, Macfarlane, and Reid, at the house of Mr. Brooker; I did not tell them the reports I had heard about the vessel. I produced an authority I had from the underwriters to endeavour to save the vessel, and inquire how she was sunk. I said to Easterby and Macfarlane, it was necessary to detain the captain and the crew, in order that they might assist me in getting the vessel on shore, and saving the vessel and cargo, as they might be of use to me." After that information, to be sure, it would have been as well that they should have kept the captain there, and not have sent him off. "I mentioned no other reasons for detaining the captain, at that time. Reid took a watch out of his pocket, and said, that was part of the cargo, and that he had no right to it." So that he at that time owns, that one of the watches he produced was part of the cargo, and he had no right to it. "I went with a gentleman of the name of Smith to the vessel, and saw the situation she was lying in; at that time the boatmen were endeavouring to get her up, under the direction of Mr. Smith, a gentleman who lives at Brighton. I found my interference would answer no purpose; they brought her on shore; I remained at Brighton the remaining part of the day. I took notice of what they were about, but took no active part in the business. On the Wednesday morning, I went to the place where the stages generally go out from Brighton, where I saw Easterby, Macfarlane, and Reid. I soon afterwards joined and they informed me that captain Codling was going to London in the stage. I expressed my astonishment at their permitting him, after what had passed the day before; Easterby then said he would detain him, and send one of the boys in his place. I do not remember communicating then what I had heard about the loss; it was rather a delicate matter to do so. I and Easterby walked to the Old Ship; Macfarlane was gone off; Reid said he had a box of watches and time-pieces, also a small bale which he wished to give up. I met captain Codling at the inn; I told him he was very wrong in attempting to leave

Brighton till the fate of the vessel was known. He told me he had no place to sleep in, and was obliged to sleep on the floor. Easterby said, his staying there would be attended with considerable expense. I said I would bear the expense on behalf of the underwriters, and that I would endeavour to get him a bed at the White Horse, if he could not get one where he was: Codling said, very well. The ship was not then got on shore; she was on her way. I was standing on the beach when she was hauled on shore, on Thursday morning, the 12th. I saw the hole in the vessel from the outside. I went on board her; I was the first man that went into the cabin. I found the lockers on the larboard side had been knocked down, and part of the ceiling was torn up; and there was a hole which appeared to have been made by a rude instrument; it was about nine inches long, and four or five broad; that hole was in the run, upon the larboard quarter. I did not then perceive any other hole. On the day following I observed two larger holes in the larboard run; they were not sufficient to have sunk the vessel; the other was. I have no doubt the vessel was sunk by the hole made by that rude instrument, which appeared to me to be done from within; the locker and the ceilings were knocked down for the purpose of doing it. The vessel was lying on the opposite side to that on which these holes were made. The vessel never lay upon the side where the holes was made, but upon the other; and being a sharp vessel, it appeared impossible to be done by an anchor or a rock. I saw an auger upon the cabin floor. Having viewed the ship, I then saw Easterby and Reid; they were at Brighton; they were examined the day following before a magistrate, at Lewes. I told Easterby he had acted very imprudently in letting Codling leave Brighton; I understood then he was gone;" which, after this second representation on the part of Douglas, was a very improper thing. "I do not know whether Reid was present at that time. Easterby said, he thought there was no harm in it; he was only going to London, and meant to return the day following." Did he return the day following? was there any truth in that story? does it appear from any circumstance that he ever meant to return? had they not told him to go and keep himself concealed? and does not it appear by this letter, that it was their desire he should go out of the kingdom? "Mr. Lavis came down from London on Friday morning, Easterby had left Brighton. That was after Easterby and Reid had been taken before the magistrate, and were discharged." There is nothing in that circumstance, whether the magistrate judged rightly or wrongly; from the evidence before him, perhaps he might as well have hesitated a little about discharging them, or admitting them to bail; but that concludes nothing, either as to their innocence or guilt. "I went to Easterby's lodg-

ings, and found some letters directed to him ;" one of them was the letter from Codling, in which he mentions his going to Harwich, and his endeavours to get out of the way in the manner there stated. "I mentioned to Reid that it appeared to me the Adventure had been sunk intentionally; I believe I mentioned it to Easterby likewise; they said, they made not the least doubt of it, from the appearance of it. I went from Brighton to London, and directly down to Harwich. I applied to the postmaster there, to see the names of the persons on board the packet. I saw no name of Codling. There were two packets under weigh, going to the continent; I got the warrant backed, and pursued the packets; I got on board the first packet; I did not find him there; I searched the other, and I found captain Codling in one of the bed places in the cabin, with his coat off; the rest of his clothes, I think, were on. There were two water-bailiffs with me; they secured him."

Upon his cross-examination, he says, "Reid told me there were some watches and other things he meant to give up to me. The watches and the box were at the tavern; he counted out the watches to me; they were in his possession along with the rest of his baggage, nailed up in a box. The box was about a foot and a half long; it might go into a trunk." So it does appear, that soon after he went on shore, this box of watches was produced by Reid. What became of the trunk we have no farther account, but that he has all along stated, that he was a ruined man, and had lost every thing he had in the world. He had these contents of the trunk undelivered up at the time when he said he had lost every thing, and was a ruined man; and the rest of the contents of the trunk are unaccounted for.

Mr. Richard Brewer is a shipwright. He says, "After the Adventure was sunk off Brighton, I superintended the fishing her up, and bringing her to shore. I observed the water running out from three places below the water-mark. The uppermost was fourteen inches below the water edge; the holes were in the larboard after-quarter, in the run. These holes were made from the inside. I am a sufficient judge, having been used to the shipwright's business twenty-six or twenty-seven years, to know very well whether a hole is made from the inside or without; it always leaves a roughness on the outside if you bore from the inside. I found the lockers were broke, and the ceiling torn up, which enabled them to get at the place where the holes were made. The hole, where the locker was broke, appeared to be done by a handspike, or some blunt instrument. That hole measured eight inches and a half, by two inches and a half. The other appeared to be made with an auger. I found one auger, the other I could not find. The auger-holes were bored by taking up the scuttle of

the cabin floor. This is the auger I found; it had no fixed handle to it." He produced two planks of the vessel. He says, "One is the plank in which the two auger holes were made, and this other, the plank in which the hole was made by a crow-bar, or some such thing. The auger holes were not sufficient to sink her; but that made with the crow-bar was, if they had had fifty pumps. The holes were plugged by my direction. She was destroyed as a vessel for the purpose of navigation, till she had the holes plugged up."

Philip Morling, who is book keeper at the coach-office in Brighton, says, "I know two of the prisoners, Codling and Easterby. Codling went by one of our night coaches, at ten in the evening, on Wednesday the 11th of August. I cannot say who took his place; seven shillings was paid towards it; Codling's name is entered as Postato; a gentleman came with him; I think it was Reid." Reid it appears was privy to Codling's going off; and it will be for you to say, whether he was not also privy to the whole of what was acted on board. "They came to the coach-office about nine o'clock. Either Reid or Easterby inquired for the captain; the captain was not there at that time; one of them remained in the coach-office, and the other went out. I cannot say which returned with the captain; he went an outside passenger."

Richard Perry, an officer of the Thames police says, "I had a warrant given me to execute against the prisoner Easterby, on Sunday the 15th of August. I received it on the Saturday evening; Macfarlane was then in custody. I went on the Sunday morning, between four and five o'clock. I waited about there, till I saw the appearance of somebody stirring in the house. I rang the bell, and asked if Mr. Easterby was in the way. I received an answer, that he was in the country. I went several times, and said, I must see Mr. Easterby; but I did not see him. At two o'clock the same day, I went again with another officer and an attorney; we planted several boats to prevent his escape; we then got admittance, and I took him into custody."

Mr. Langridge is then called. He looks at a paper (a power of attorney) which was proved before to have been delivered to Mr. Lavie. He says he received it from Reid on the 13th of August. Then the power of attorney is read, which appoints Reid the supercargo, and authorises him to take upon him the sole navigation of the ship. This is read in proof of his being an officer belonging to the ship. Gentlemen, that is a point you may for the present assume, that he is an officer belonging to the ship; if he is not such in point of law, and a person properly within the description of the act, he will have the advantage of that hereafter.

Mr. Elstob, the subscribing witness to this instrument, says, "Macfarlane executed this in my presence for himself and Easterby. It was prepared in my office, I think by Mr.

Macfarlane's direction ; but I am not certain. I do not think Mr. Easterby was in town.

Mr. Langridge, upon his cross-examination, says, "I am an attorney at Lewes, and am clerk to the magistrates sitting at Lewes. I saw Reid immediately upon his being brought from Brighton to be examined before those magistrates. He was brought to Lewes on the 13th of August ; he put the power of attorney into my hands, before the magistrate, very readily. He was discharged upon his recognizance, and that of Mr. Easterby. He remained at Lewes from the 13th to the 22nd ; he was then taken into custody by a warrant from sir John Eamer. He informed me of a trunk which he had sent from Deal to London. I had previously informed Mr. Lavie of its being at the King's Head ; from Mr. Reid's information, he hoped, he said, it might be searched to prove his innocence." So that he, at this time, and when it should seem he was under a criminal charge, informed Mr. Langridge, and Mr. Langridge informed Mr. Lavie, of this trunk, and then he takes merit to himself for having made this communication, and says he hopes they will be satisfied with it, and that it will prove his innocence. It is for you to say whether this is at all consistent with his own representation, that of his having lost every thing he had in the world. He was carried to Lewes to be examined by the magistrates, and was in custody there at the time when he delivered up these papers.

Mr. Blackett, senior, an insurance-broker, is called. He says, "I was employed by Easterby and Macfarlane, to effect insurances for them. The first application to me was on the 22nd of June, to the amount of 1,000*l.* for goods on board the *Adventure*, captain Codling, for Yarmouth, Gibraltar, and Leghorn. Mr. Easterby applied to me on that occasion ; that was a verbal order. The second was an order in writing, to effect an insurance for 3,500*l.* on goods, on the *Adventure*, captain Codling. About the same time I was desired to make an insurance for 700*l.* upon the ship ; that was a verbal order from Easterby. I was applied to by Mr. Easterby to effect another insurance, on the 22nd of July, the *Adventure* was then at Yarmouth ; that was for 650*l.* ; he said he was that sum short insured. I had an order from Mr. Macfarlane, the 29th of July, to effect 750*l.* on goods, and 250*l.* on commission, which was the supercargo's commission, and 100*l.* on the captain's goods, or wearing apparel." So that the commission of the supercargo, and the captain's wearing apparel, were covered, and the whole was covered, as you will find by-and-by. The total amount of insurance was 10,950*l.* of which 10,250*l.* is on goods, and 700*l.* on the ship. One of the witnesses makes the value of that which was found on board the *Adventure*, 3,231*l.* 1*s.* 6*d.* "I understood (he says) from both Easterby and Macfarlane, that it was the joint concern of

both ; the orders of each. The 750*l.* and 250*l.* I charged to Macfarlane, because ordered by him, and the rest to Easterby. I charged to each what was ordered by each. All the policies were returned to me by both." He produced those policies, by which he showed that he had effected them, and that Easterby and Macfarlane had the means of defrauding the other underwriters by them. Whether that was their purpose, it will be for you to judge, after recollecting the evidence, in particular that given by Storow, in which he tells you they had settled a plan, which they communicated to him, which was, to send the ship to Gibraltar, there to sell the whole of the cargo ; that, after this, they thought an opportunity might be taken to sink the ship in the Mediterranean ; and that then, half the bills for the amount of the cargo might be remitted in private letters, and the other half in public letters, in order to be able to suppress a part of the proceeds, that should be sent home by a private conveyance. "All the policies were returned to me on account of a doubt I had of the security for the premiums. I stated that first to Easterby, and then to both of them." The fact is, they deposited them partly on an old account, and partly on account of those premiums ; that is only to account for his being in possession of the policies.

Mr. Blackett, junior, is called again. He says, "I received verbal orders from my father, to get the 700*l.* policy upon the ship subscribed by the underwriters." He proves what is material for the maintenance of this indictment, that the several underwriters, who are stated as underwriters upon the ship, subscribed the policy ; therefore that allegation upon the indictment, is completely made out. He says, "Macfarlane, on the 29th of July, gave an order for 750*l.* on goods, and 250*l.* on commission. When I was in the subscription-room at Lloyd's Coffee-house, getting the above insurance done, on the same day, Macfarlane came to the lobby, and desired me to get 550*l.* more insured upon goods, telling me he could not wait to sign an order for it." So that beyond this there was an intention to have 550*l.* more effected. "I did not get the policy effected upon that 550*l.* my father prevented me."

Mr. Blackett, senior, is called again, and says, "I received direction from Easterby, not to go on ; that was after I had determined to stop any farther insurance. Then Easterby told me, Macfarlane was wrong to order more insurance, as the vessel was full. My communication with Easterby, was three days after I had sent notice to Macfarlane, of my refusal to go on with the insurance.

John Walker Hart, an insurance-broker, says, "I received orders from Easterby and Macfarlane jointly, on the 23rd of June to effect 4,000*l.* on goods, upon the *Adventure*, Codling." This 4,000*l.* makes a part

of the total of the 10,000*l.* which I stated. "Both Easterby and Macfarlane wanted me to effect eight or ten thousand pounds. They both told me it was a joint concern. I observed to Easterby, it was a small vessel, and that the goods on board must be very valuable, to be subject to so large an insurance. He said that there were silver-plated goods, woollens, and linens: which lie in a small compass. The ship is between seventy and eighty tons." It appears, according to the register of tonnage, to be between fifty and sixty tons.

Mr. Brooker, an attorney and notary public, at Brighton, says, "On the loss of the ship, I was applied to, to prepare a protest. Captain Codling, the supercargo Reid, and the mate Cooper, came together; they did not deliver any bills of lading to me."

Colbatch, clerk to Mr. Brooker, says, "I prepared the protest; I saw Codling; I received the bills of lading from him; and I inserted the short heads of these bills of lading in the draught of the protest correctly, and afterwards carried them into Mr. Brooker's office." These papers appear to have got back to the hands of Easterby; and therefore the account of these bills of lading, stated in the protest, is admissible evidence; and this is material, in order to show the quantity of goods they stated to be on board. By their protest they state even more than the manifest states, and the manifest vastly exceeds the goods actually found on board, which is a farther circumstance submitted to your consideration, in addition to the high over-insurance, to induce you to believe that a considerable quantity of goods, supposed to be on board, were either originally withheld, or afterwards withdrawn from the ship. All of these are circumstances which have, to be sure, a most fraudulent aspect, and go in confirmation of the story as related by Cooper and as related by Storrow, of an intention to sink the ship. "The bills of lading were produced; I suggested there might be one, not there to which Codling rather assented; and I put down at the foot of this protest, that there was another bill of lading mislaid."

Mr. Thomas Whitmore produces the original cockets, from the Cocket-office.

Mr. Henry Read, of the Searcher's-office, produces the manifest.

Mr. Charles Flowerdew says, "I took the particulars of the manifest from Easterby; and this is that manifest; nobody, except Macfarlane as to one entry, gave me directions, excepting Easterby." This was sworn to by Codling, as the manifest of the ship *Adventure*. Now the goods, when actually taken from on board, differ in a variety of particulars; six cases, containing 259 ounces of wrought silver, are not there, and a variety of other articles, which I shall presently state.

William Gates, the principal officer of the customs at Brighton, says, "I remember the *Adventure* being cast away there; I remem-

ber her being afterwards brought on shore. In order that a report might be made, Easterby came on the 11th to expedite the report, as the captain wanted to go that night; what I inserted in the report I copied from the cockets, which were given me by the captain." The captain has sworn to the report, which is the same as the manifest, and the manifest corresponds with the cockets.

Mr. Storrow looks at the London manifest, and says, "This is Codling's hand-writing."

Mr. Thomas Tasker, one of the salvors of this vessel, produces an account of the cargo found on board when the hatches were opened. He says, there are no cases of silver; of course, there are none of those six that are mentioned in the manifest; two casks of earthen ware are missing; there are no boxes of china; of course, therefore, the four stated in the manifest are missing; there are not eleven, but only five, bales of short and long cloths; of course, six of them are wanting; two fowling-pieces are missing; there were not eight, but two pair only of pistols; there were no cases of hats whatever; there were not an hundred bottles of painter's oil, there were only fifty-eight, of course, forty-two of them were missing; there were no cases of pickles; there was not one grand piano-forte, as stated here, but a broken one, the maker's name Ganer; there was no other piano-forte; there were not two cases containing two organs. Gentlemen, you will recollect that this grand piano-forte is found in the house of one of these owners. This witness showed Mr. Myers all the articles found, except two cases of tripe, which were not worth more than a pound.

Mr. William Myers, a broker, says, "I saw all the cargo recovered from the *Adventure*." And there is no evidence affected to be given you of any stealing of the cargo, or of any of that plunderage which Reid expressed himself so apprehensive of; it was landed under a guard of soldiers, and all the means used to prevent any spoliation of it. You find that the cargo of this vessel was insured for 10,250*l.* and that it was ordered by the owners to be insured at more. Mr. Myers says, "I valued the cargo recovered from the *Adventure*, the original full value, as between seller and shipper, is 3,231*l.* 1*s.* 6*d.*"

Andrew Munro, clerk to Mr. Davallon, says, "I executed the order to Easterby and Macfarlane for the silver goods, the real price of them was 250*l.* odd. Besides the silver goods, there were fowling-pieces, and other articles of cutlery. The total amount of the invoice was between seven and eight hundred pounds, exclusive of the silver; in the whole it was about 1,150*l.* Our lighterman carried the silver goods on board; these silver goods were originally packed in one case; they were, by the order of Easterby, put in six packages; they were altered from one to three, and then from three to six packages, by Easterby's

desire, to be more safe to stow in small lockers. I never saw the articles on board; I left them at the Custom-house quays: I cannot be sure these pistols are the same; I furnished similar articles, manufactured by the same maker; I furnished several such fowling-pieces; I made two invoices of the goods; in one invoice the goods were charged seven and a half per cent higher than in the other, and than we should otherwise charge; and this I did at Easterby's request; we were to be paid at the reduced price." This must be done for the purpose of fraud; but whether done specifically to effectuate this fraud, in order to charge the underwriters, or with a view to selling the goods abroad at a higher prime cost, does not appear; but it certainly was a fraudulent transaction.

Thomas Bhagdon, a waterman, says, "I went with Easterby on board the Adventure; I brought away twelve cases for him, whilst the vessel was loading." So here is a subtraction, a withdrawing of goods from the vessel after the goods were loaded on board. "I remember six small square cases being taken out by Mr. Easterby's order; these cases were about six inches longer than they were broad." That seems to tally with the description of the cases which contained those goods furnished by Andrew Munro. "I took away six smaller ones, marked E. M. upon the top, signifying Easterby and Macfarlane, I suppose. I carried them to Mr. Easterby's house; he took two of them under his arm."

Mr. William Rolfe, a musical instrument maker, says, "I was applied to by Easterby, on the 11th of May, to furnish him with musical instruments for exportation. He ordered a grand piano-forte for his daughter; he brought with him, at the same time, Mr. Macfarlane, who wanted some musical instruments, of different descriptions, for exportation; they consisted of a small table organ, of some violins, flutes, printed music, strings, and a very large elegant organ. Mr. Macfarlane said, they were to be shipped, but on what ship I know not. On the 19th of June I delivered the instruments and the music at Macfarlane's house, at Bethnal Green; they were all unpacked, excepting the small organ, that was packed in a small case. The violins, flutes, music and strings, were packed in another case, ready for exportation; the large elegant organ was ready for packing; it was sent down; a packing case was made, but it was not packed in the case. There was a second-hand small piano-forte, by Ganer, which was repaired, that was delivered at Easterby's house, on the 11th of March, with the grand piano-forte for the use of his daughter; the small one was packed up ready to ship. Mr. Easterby desired to have bills of parcels in the joint names of Easterby and Macfarlane, to deliver to the supercargo; all the instruments were to be included in the bill of parcels; and he said he would ship the grand piano-forte with the rest, but said his

own workmen should make the package. I offered to make it and pack it for him, but he never sent to me for that purpose. I have seen the instrument since; on the 23rd of August I was applied to, by Mr. Lavie, to remove the organ from the house of Macfarlane; I found the elegant organ, which is mentioned in the manifest and cocket, at Macfarlane's; the day following I went to Easterby's; I found there the grand piano-forte which he said was to be exported. I have since seen the box or case, containing the violins, flutes, strings, and music, at the Police-office. These are the bills of parcels I made out for these goods; the first is 185*l*. 7*s*. that is the price I charged for the goods; the other is 221*l*. 10*s*. 6*d*. I was instructed by Easterby and Macfarlane to make the large one to be given to the supercargo, as a regulator for him; it might be three or four days after the delivery of the articles."

Richard Perry says, "I found at Mr. Easterby's fifteen different packages; fourteen packages, besides a grand piano-forte, and this bundle, containing pistols, and several other articles; I found a large plated urn;" and he states many other things. It only appears, that he had a number of packages of similar goods, with those which are mentioned in the manifest, and which appear to have been subtracted from the ship. The witness says, "I got the case of musical instruments at Mrs. Smith's, sister to Mrs. Pattison."

Jane Smith is called; she says, "I am sister to Mrs. Pattison; I live in King David-lane, Shadwell; I gave some keys of Mrs. Pattison's to Perry the officer. Mrs. Pattison used to be at Macfarlane's; I cannot tell how long it was after the things were taken to my sister's, before Macfarlane was in custody."

Mrs. Phillis Pattison says, I am acquainted with Macfarlane; I have been so five years; I was at his house when he was apprehended; I was a close neighbour to him; I was sometimes at his house, and he sometimes at mine; I carried some goods, of my own accord to my lodging; Macfarlane had made no observation to me upon these goods; I took them away, because there was only a servant then left in the house; and, as I thought of a bankruptcy, I thought it right to secure every thing I could; I removed every thing I could conveniently move in a coach; I removed them very shortly after he was taken into custody, to my house; the first night after, or the night following; I was not in his house when he was apprehended; I was in my own house; I was going over with a lady and gentleman to my own house, and Macfarlane was with us; I removed chiefly boxes; Macfarlane did not order me to take them at all; he only expressed himself uneasy about his furniture, on account of leaving them with his maid servant, without any protector; I see Mr. Macfarlane every day," and so on.

Mr. Hart, the broker, proves a notice of abandonment, signed by Easterby and Macfarlane, of the cargo at the time to the underwriters on the cargo; and another notice of abandonment, signed by Macfarlane, as owner of the ship; that shows that Macfarlane was proceeding in order to avail himself of the loss of the ship, and Easterby and Macfarlane of the cargo; and they are both before stated as having represented themselves as owners of both.

Gentlemen, here the evidence on the part of the prosecution closed; there were several objections taken in point of law, the benefit of which is fully reserved to the parties, and will furnish no subject for your consideration. You will consider the circumstances of the ownership as a fact completely proved; and Mr. Reid, the supercargo, in respect of his office and situation on board the ship before described, as comprehended within the description of the officers who are liable to incur the penalty of the offence which is by this act made felony, in case under the circumstances you find him guilty of it; and in order to find him guilty of it, you must be satisfied that he was, at the time the act was done, privy to it, and lending his aid and furtherance thereto.

The first witness for the prisoners captain Amos, is called for captain Codling; he is asked, if captain Codling did not give every assistance? He says, "Yes, for every thing I saw." This was at the time when, in fact no assistance could be effectual; for nothing could have saved her in that situation; "she was completely water-logged then; we made a rope fast to her as soon as my vessel was upon her, being a heavy vessel, she came up, righted herself, and then went down."

Thomas Mankin says, he has known Codling twenty-five years; he always had a very good character.

George Pearson has known Codling his whole life; he bore a good character.

Fox lives at New Crane; he is concerned in shipping; has known Codling twenty-four years; and John Sedgell, a publican, has known Codling about fifteen years; he has always borne the character of a very humane, honest man.

John Morgan has known Codling fourteen years; he has a good character.

Robert Charlton has known Codling near thirty years, he has always maintained a good character.

Thomas Locke has known Codling twenty-five years; has been perfectly well acquainted with him fifteen years; always found him a respectable man as master of a ship.

Richard Leveridge has known Codling twenty years; he has been a good kind of a man during the whole of that time, to his knowledge.

Thomas Ingleton has known Codling fifteen or sixteen years; he always considered him a good kind of a man, as far as he knew him.

Gentlemen, before I read what is in evidence for the character of the other prisoners, I will observe to you, that, in case of nice and doubtful discussion, where the guilt of the party is extremely questionable, charity would induce one to lean in favour of the person charged with any crime, if his antecedent conduct in life has been, upon the representation of persons acquainted with him, such as renders it highly improbable that he should have been guilty of the crime imputed to him; but, in such a case as this, character will avail little; for, although those persons may not have seen the party in circumstances in which any such a disposition of mind was manifested, as the party who could commit this offence must be supposed to have, still they prove nothing against positive evidence of the fact, if such evidence exists.

Mr. Nathan Smith says, "I live at Brighton; I saw Reid the day he came on shore; I told him I would forfeit 100*l.* if I did not get the ship on shore; he said, if that is the case I should meet with a handsome reward from the underwriters; the Brighton men assisted in bringing the ship on shore afterwards."

Upon his cross-examination he says, "I thought there was something not quite right, and therefore I was anxious to get her on shore: I had heard nothing of the underwriters till he mentioned that all he had was on board; he had lost his all: this was on Sunday."

Miles speaks to Codling's character; he says it is very fair, that he never knew any thing of him but what was right and just, Miles belongs to the ship at Brighton; he says, "I remember Reid coming on shore, and bringing some watches with him; he put them under my charge for security; I gave them up to him in Easterby's presence; he said that they came out of the ship." This was on Sunday; immediately after his coming on shore, he gave up these watches, and said they came out of the ship. He does not say whose property they were, but owns this part of the property is saved out of the ship.

Thomas Keene, a surgeon in the navy, has known Reid eight or ten years or more; he is a purser in the navy, has sailed with him in the Queen three or four years; he says, his hearing has been much impaired for many years; he never knew a bad character of him.

To Macfarlane's character the following witnesses are called.

General Morrison, who says, "Macfarlane was a lieutenant in my regiment, the South Middlesex militia; he is a good officer; I appointed him a quarter master; and I recommended him to lord Titchfield for an adjutancy."

James Kilpatrick has known Macfarlane five years; he has a good character; very correct; very honest.

Captain Jarvis has known Macfarlane from

the year 1799; says, he was always reckoned a good officer, and discharged his duty as became an officer.

James Mason, paymaster of the same regiment of militia, has known him upwards of five years; he looks upon him to be as honest a man as he ever had any dealings with.

Stanton has known Macfarlane near three years; he says he has the best character a man can have.

Captain Musseron, of the Tower Hamlets militia, has known Macfarlane three years; he always found him a good officer, and always thought him a very honest man.

Mr. Forsyth has known Macfarlane between two and three years; he always acquitted himself as a very honest man.

Mr. Ivory, who is in the spirit line, has known Macfarlane seven or eight years past; his character has been uniformly good; he has ever made his payments regular.

Mr. Boydell has known Macfarlane three years; he always found him a good neighbour and honest man.

Thomas Hamilton has known Macfarlane five years; he has had universally a good character during that time; he would trust him with a thousand pounds.

Mr. Miles has known Macfarlane five years, in the West Indies and here at home, his character is perfectly good.

Gentlemen, the other evidence it is not material to state to you; it applies to a point which will be reserved for the consideration of the judges: that consists of some ship's registers which were given in evidence on the part of Easterby, to prove that he was not an owner, according to the provisions of a particular statute, of which, as far as it will be available, he will have the benefit hereafter.

To Easterby's character, Mr. Yeates is called; he has known him about eighteen months; he has known nothing but integrity and good conduct, as far as he has known him.

Gentlemen, this is the whole of the evidence, both on the part of the prosecution, and on the part of the defendants; it will be for you to say whether you believe, as respecting Easterby and Macfarlane, that there was a purpose to which they were privy, and in respect to the execution of which they were consulting and conspiring with Codling, viz. that the ship should be cast away, in order to defraud these underwriters, who appear to have underwritten 700*l.* indeed upon the ship; but the ship and cargo being cast away together, there was a fraudulent inducement to have her cast away, the cargo being insured to the amount of 10,000*l.* and the real value of the articles found on board at the time of the loss being little more than 3,000*l.*—whether, under this inducement, the cargo being of so much less value than the sum at which it was insured, and which sum might be expected to be recovered from the underwriters; these persons have conspired

together to defraud the underwriters; and that the fraud was, under their direction and procurement, carried into effect in the manner proposed by them; and that the same, in fact and substance, was by boring holes in the ship, and sinking her.

You see by the evidence of Storrow, that they had previously discussed and considered the wicked plan of defrauding the underwriters, by sending a vessel out on a voyage, and after part of the cargo had been sold, and they had received remittances for the whole, bringing only half to account, while the rest should be alleged to be lost in the ship, and which was, in order to cover such fraud, intended to be sunk. It is, therefore, no violation of any rule of Christian charity to suppose them capable of committing that crime, which they had consented to the commission of, and which they had planned the means and scheme of committing, at a time considerably antecedent to that at which the destruction of this ship took place; you, have, therefore, an antecedent communication upon the same or a similar project; you have, after it is done, Easterby, in the presence of Macfarlane, reproaching Codling for the imperfection of the execution of their purpose, by having sunk the vessel so near the English coast, instead of having sunk it on the French coast, by which means he would have avoided the danger of detection; you find them there communicating upon the danger of the situation in which they were placed; and Cooper told, that he might be sentenced to be hanged, and both Cooper and the captain advised to fly and conceal themselves. You find, in consequence of that advice, Cooper goes to Saxmundham, and the captain to Harwich; and you find him in a letter, in his own hand-writing, communicating his own guilty feelings and conduct, and showing clearly that he was flying from justice. It appears, likewise, that great part of the cargo was withdrawn, and was found, part at Easterby's and part at Macfarlane's house.

It is for you, laying all the circumstances given in evidence together, and principally the circumstances I have last stated to you, to say, whether you believe Easterby and Macfarlane are guilty of having with Codling concerted a plan, and of having conspired with him for the destruction of this vessel, and that Codling was present at such destruction, and himself effected the same, by the immediate hands and agency of Cooper, and in the manner sworn to, particularly by Cooper. If you believe them so to have been guilty from the circumstances stated, from the evidence of this accomplice,—confirmed not by one witness only, but by every person on board, in every the minutest circumstance that could have fallen under their observation,—you will then say whether that confirmation does not place him in the situation of a witness to whom full credit is due, notwithstanding the guilty part he bore, as an

instrument in this transaction; if you shall so believe, as to the testimony of Cooper, then the circumstances respecting the destruction of the ship, and Codling's criminality in regard to the same, are completely established; if drawing such inferences from Storrow's evidence as appear to you to be just, and recollecting also the circumstance of Easterby's sending Codling from Brighton, at a time when he was called upon by every sense of duty to have kept him to assist in getting the cargo on shore, and investigating such grounds of suspicion as arose respecting the destruction of the vessel: if these and the other circumstances I have stated, make you believe that Easterby and Macfarlane were concerned in procuring the destruction of the ship, it then only remains to be considered, in what situation you conceive Reid to stand. He was on board the ship; one witness, indeed, mentions his deafness; it appears that he was in a place near where the holes were bored, and if he had the usual faculty of hearing, which belongs to other people, he might have heard the water rushing in, and which the boy who went down heard; he continued on board; and you are to judge whether you should infer from the circumstance of his stating that, which upon the evidence appears to be untrue, as to his loss, whether he was not also privy to this purpose, and privy to the execution of it; he has his goods brought on board in a trunk one day, and carried on shore the next. How these watches came ashore does not appear; he expresses his wishes that the ship should go to the bottom, to avoid being plundered: why he should express that wish, if there was nothing that he was afraid should be disclosed to the eyes of persons who should see the vessel, one is at a loss to conceive; however, he does give twenty watches back, and at a subsequent period, when before the magistrate, makes a communication which leads to a discovery of the rest of what was in the trunk, by means of an information to Mr. Lavie, solicitor for the prosecution.

Gentlemen, it will be for you to say, whether you think him implicated in the charge, to the extent of knowing and agreeing to, and, as far as he was able, assisting in the acts done by Cooper, viz. the boring these holes for the destruction of the ship, and assisting in it; if you shall be of opinion that he did so, by purposely forbearing to do his duty, and aiding and assisting in the casting away, sinking, and destruction of the ship, you will find him guilty; if you are not satisfied as to these particulars in respect to him, you will find him not guilty. As to the other prisoners, I have already made the observations which relate to them; at this late hour I will not detain you any longer; the evidence is all before you, uncontradicted in any part; and it is for you to say what credit you give to it.

Easterby.—May I be permitted to make a few observations before the jury withdraw.

Lord Ellenborough.—You were asked whether you had any thing to say to the jury; you left your defence to your counsel. If there is any thing that occurs to you, which you would wish to have suggested to the jury, if you state it to me, I will attend to it, and if it is proper, submit it to the consideration of the jury; but an address to the jury, after the evidence is summed up, cannot be permitted.

Easterby.—There are two points; one against Cooper, the other against Storrow.

Lord Ellenborough.—Circumstances you wish to relate to their disadvantage?

Easterby.—Yes.

Lord Ellenborough.—That cannot be admitted.—Gentlemen, there would be no end, and indeed it would answer no convenient purpose of justice, if, after a trial is brought to its regular and legitimate conclusion; after the counsel for the prisoner have called those witnesses, whom in their discretion they thought proper to call, if the party should be allowed farther to call any witnesses, and to make any statement of facts he should think fit, after the conclusion of the case on both sides, and the summing up of the evidence by the judge. This cannot be done.

The jury withdrew at twenty-five minutes after eleven o'clock at night, and returned into court in about a quarter of an hour, with a verdict, finding

WILLIAM CODLING, Guilty.

JOHN REID, Not-guilty.

WILLIAM MACFARLANE, Guilty.

GEORGE EASTERBY, Guilty.

All the prisoners were immediately removed from the bar, excepting William Codling, who remained to receive the judgment of the court.

Sir William Scott.—William Codling, you have been indicted of an offence to which the laws of your country have affixed the punishment of death.—That country has given you the benefit of a most deliberate trial; and upon the result of that trial it pronounces you a guilty person: it now awaits you to hear the sentence under which you are speedily to receive the consummation of its justice.

In the short time that may remain to you for reflexion in this world, it cannot but occur to you that you fall most deservedly a sacrifice to the respect which the law bears to the property of your fellow-subjects. Under that law you have been protected in the possession and in the enjoyment of your own property: all that honest industry had acquired, or could acquire for you, was secured to you under its guardian care; but the fruits of honest industry have not proved sufficient for your desires; you have thought fit to commence a most treacherous warfare upon the property of others—property peculiarly entitled to respect, as being employed in the act of protecting your own property and that of other men;

for such is the employment of the property of that description of men whom it was your intention to defraud.

You doubtless flattered yourself with the expectation that the criminal act was not more easy in the execution than difficult in the detection; but it has pleased the Disposer of Events to exhibit in your person another instance of the delusion of guilt. May other men be instructed by your example to recollect, that short is the prosperity of fraud; and that to be just to others is to practise true wisdom towards themselves.

The only office of kindness that I have to perform to you, is to recommend to you to see the few days that may remain to you of life, to your best advantage:—for the circumstances of your case afford no reasonable prospect of mercy. It is a late wisdom, but the only wisdom which now remains for you to practise,—to prepare yourself for the conclusion that awaits you, under the execution of the sentence which it is my duty now to pronounce. That sentence is—

That you, William Codling, be taken from hence to the place from whence you came, and from thence to the place of execution; where you are to be hanged by the neck till you be dead—and may God Almighty have mercy upon your soul.

John Reid was discharged.

William Macfarlane and George Easterby were remanded to Newgate.

William Codling was hanged at Execution Dock, on the 27th of November.

The case of William Macfarlane and George Easterby was argued before the twelve judges

in the exchequer-chamber, on the 13th of November; and in Serjeant's-Inn hall on the 30th. On the 3rd of May, 1803, a pardon was issued, which is in the following words:

George R.

Whereas William Macfarlane and George Easterby were, at an Admiralty session, held at the Old Bailey on the twenty-sixth day of October last, tried and convicted of wilfully and feloniously procuring William Codling, master of the vessel called "*Adventure*," feloniously to sink and destroy such vessel on the high seas; but a doubt having arisen, "Whether the procurement of the destruction of the ship by the prisoners was an offence committed by them on the high seas within the jurisdiction of the court of Admiralty, under the stat. 11 Geo. I. c. 29, s. 7," the same was reserved for the opinion of our judges: we, in consideration of a representation made to us thereupon, are graciously pleased to extend our grace and mercy unto them, and to grant them our free pardon for their said crime; our will and pleasure therefore is, that you cause them the said William Macfarlane and George Easterby to be forthwith discharged out of custody; and for so doing this shall be your warrant.

Given at our Court at St. James's, the 3d day of May, in the 43d year of our reign, by his majesty's command,

PENMAN.

To our trusty and well-beloved the judge of our high court of Admiralty, the sheriffs of our city of London and county of Middlesex, and all others whom it may concern.

This case occasioned the enactment of the stat. 43 Geo. 3, c. 113, which was introduced by lord Ellenborough.

650. Proceedings on the Trial of EDWARD MARCUS DESPARD, Esq., for High Treason; tried at the Sessions House, Newington, Surrey, before the Court holden under a Special Commission of Oyer and Terminer, on Monday February 7th: 43 GEORGE III. A. D. 1803.*

PRELIMINARY PROCEEDINGS.

On the 3d of January, 1803, a special commission of Oyer and Terminer, issued under the Great Seal of the united kingdom of Great-Britain and Ireland, to inquire of certain High Treasons, and Misdemeanors of Treason, committed within the county of Surrey, and a special commission of Gaol Delivery, as to all persons who were, or should be in custody for

such offences, on or before the 25th of March following.

On the 21st of January, the special commissions were opened at the Sessions-House at Newington.

PRESENT,

The Right Hon. *Edward Lord Ellenborough*, Lord Chief Justice of his Majesty's Court of King's Bench;

The Hon. *Sir Alexander Thompson*, knight, one of the Barons of his Majesty's Court of Exchequer;

* Taken in short hand by Messrs. Gurney.

The Hon. Sir *Simon le Blanc*, knt. one of the Justices of his Majesty's Court of King's Bench;

And the Hon. Sir *Alan Chambre*, knt. one of the Justices of his Majesty's Court of Common Pleas.

The sheriff delivered in the panel of the Grand Jury, which was called over, when the following gentlemen were sworn.

THE GRAND JURY.

The Rt. Hon. George Wm. Evelyn Leslie, commonly called Lord Leslie.	Sir T. Turton, Bart.
The Rt. Hon. Thomas Onslow, commonly called Viscount Cranley.	Sir R. Burnett, Knt.
The Right Hon. Wm. Russell, commonly called Lord William Russell.	Robert Hankey.
The Hon. C. Norton.	James Trotter.
Sir M. Parsons, Bart.	Joseph Alcock.
Sir J. Frederick, Bart.	John P. Kensington.
Sir G. Glynn, Bart.	Joseph Bradney.
	Henry Thornton.
	Henry Peters.
	Thomas Page.
	John Whitmore.
	Thomas Langley.
	William Borradaile.
	Thomas Gaitskell.
	Richard Wyatt.
	J. W. Weston,— <i>esqrs.</i>

Lord *Ellenborough*:—Gentlemen of the Grand Jury;—We are, on this occasion, assembled under the authority of his majesty's commission, issued for the trial of certain persons, charged with all, or some of the offences therein specified. Those offences are high treasons, and misprisions of high treason; offences against an act made in the thirty-sixth year of his majesty's reign, "for the safety and preservation of his majesty's person and government, against treasonable and seditious practices and attempts;" and against another act made in the thirty-seventh year of his reign, "for the better prevention and punishment of attempts to seduce persons serving in his majesty's forces by sea or land, from their duty and allegiance to his majesty, or to incite them to mutiny or disobedience;" and lastly, against another act also made in the same thirty-seventh year, "for more effectually preventing the administering or taking of unlawful oaths."

Many of these, you will observe, are of that species of offence, which, from its peculiarly malignant effect upon the peace, happiness, and security of the realm, and from its direct and immediate tendency to subvert and destroy the foundations of all government and legitimate authority, have at all times been justly placed in the highest class and order of crimes, which is known to the law of England. By this description, I shall of course be understood to mean the crime of high treason, committed against the person and royal authority of the sovereign.

Another of the offences, which is by the same commission immediately subjected to your cognizance, and against which the above-mentioned statute of the thirty-seventh of George 3rd. is particularly directed, is an offence second only in degree, and inferior only in magnitude and enormity, to the crime of high treason itself, and of which indeed it forms, in some cases, and most probably will be found to do so in the present, a very material part and member? I mean the crime of "seducing persons serving in his majesty's forces by sea or land, from their duty and allegiance to his majesty."

The law of this land, from the earliest period at which it is known to us, has, with an anxiety in a considerable degree proportioned, but at present, from various causes hardly adequate, to their supreme value and importance, watched over and protected the life and personal safety of the sovereign. It has considered, in his instance, the mischievous workings and imaginations of the mind, the malignant purposes of the heart, when directed towards his destruction, and manifested so to be by any act plainly done in prosecution of such purpose, and conducting to its execution, as equally criminal in their nature, and has rendered them equally penal in all their consequences, with the actual perpetration of the atrocious deed itself, which is the object of such imagination and purpose.

To investigate and ascertain the existence of such a purpose in the mind of the person charged therewith, and the nature and tendency of the acts done by him in the supposed prosecution of such purpose,—and which acts are, in high treason, denominated "*overt acts*"—is at all times, the weighty care and duty of a Jury, charged with the important function which you are at present called upon to exercise.

What should be deemed sufficient "*overt acts*" of the particular head and species of treason, "of compassing and imagining the death of the king,"—in other words, what acts properly amount to legal evidence of the existence of such a purpose, in the mind of the person charged therewith,—has been occasionally, heretofore, the subject of dispute and controversy. Long, however, before the passing of the late statute, of the thirty-sixth of his present majesty, this, at least, had been judicially settled, by the most grave and revered authorities of the law, that all measures adopted for the deposing of the king from his royal state and dignity, all measures of force directed against his royal person, either for the taking possession thereof, or subjecting it to restraint and imprisonment, are impressed with the heinous character and stamp of this

denomination of treason, and entitled to be received as the strongest and most cogent evidence thereof.

It has also been settled by the like high authorities, that any consultations and meetings of persons in order to effectuate the above purposes,—although nothing should be ultimately done thereupon, and although the whole scheme and plan should prove ineffectual and abortive,—that any agreement or assent given to overtures or proposals of that kind (and which assent is to be collected in this case, from the same circumstances of approbation or acquiescence, from which it is properly capable of being collected in all other cases) are all of them competent overt acts of that species of high treason, which consists in compassing and imagining the death of the king. All pretence, however, for doubt upon a subject, which, from its superior importance, deserved well that it should be cleared of any remaining shades of uncertainty, which might even erroneously be supposed to cloud and obscure it, has been, for all succeeding times, distinctly removed and obviated, by the prudent provisions of the late statute of the thirty-sixth of George 3rd. cap. 7, which, amongst other things, enacts, “that, if any person or persons whatsoever, during the natural life of the King (and for a limited time afterwards) should *compass, imagine, invent, devise, or intend death or destruction, or any bodily harm, tending to death or destruction, maim or wounding, imprisonment, or restraint, of the person of the king, &c.* every such person or persons, so offending, should be deemed to be a traitor and traitors, and should suffer and forfeit, as in cases of high treason.”

To compass and imagine, therefore, the *imprisonment, or personal restraint of the King*, is now, by the express letter of a clear and positive statute, placed as a substantive act of treason, upon exactly the same ground with the *compassing and imagining of the natural death of the king*, as that crime stands under the very letter and terms of the statute of the twenty-fifth of Edward 3rd. itself. The same indeed may be said of all the other treasons, which are specifically enacted in the statute of the thirty-sixth of George 3rd. and I only select, by way of instance, those of “*compassing, imagining, devising, and intending, the imprisonment and restraint of the person of the king,*” because it is probable, that the descriptions of treason I have mentioned, together with that of *compassing and imagining his death*, will be those to which your attention will be more particularly called, by the evidence about to be submitted to your consideration.

I have already stated to you, that such acts

as sufficiently indicate an intention to commit any particular species of treason, and conduce to its execution, are properly overt acts of high treason.

All overt acts which are meant to be given in evidence against the prisoner, are justly and humanely required by the seventh of William 3rd. cap. 3, to be expressly laid in the indictment against him, in order that he might thereby be apprised of the substance of the charge which he is called upon to answer; but the numerous particulars into which such a charge will naturally and unavoidably branch and extend itself in point of proof, need not be detailed and spread out on the face of the indictment.

It is enough that the nature of the overt-act relied upon, be specified with reasonable and convenient certainty; and when this is done, the various other circumstances, with which the overt-act is immediately and necessarily connected in point of fact, and the different means employed for effecting the same, need be no farther stated. Indeed, the several other matters may properly be considered as being only so many parts, appendages, and results of that which is before stated, and as virtually included therein.

I have said thus much in respect to the form of alleging the overt-act in an indictment for high treason, in the hope of affording you some assistance towards the more clearly understanding the real substance and form of that indictment, which will presently be laid before you, couched of course, in the technical language used on such occasions; and that you may also be the better enabled to judge whether it is accompanied by the competent kind and degree of proof, which ought to be adduced in support of it. I will farther suggest for your information (in case it may be necessary) what the law requires on this head. In the first place, the law requires that the crime be tried by a jury of the county within which it has been, in the whole, or in part, committed. Some one overt-act of the particular species of treason, charged in the indictment, that is to say, of the compassing and imagining the death of the king, or of levying war against him, or the like, must be proved by some one witness, to have been committed within the limits of that county, in which the indictment is to be preferred, and by a jury of which the trial is to take place. For example, some one meeting or consultation for the purpose of forwarding the objects of the treason, must, upon this occasion, be proved by some one witness, to have been held, or some other act done by the party or parties, meant to be affected thereby, at

some place within this county. This, you will observe, is merely necessary for the purpose of investing you, the jurors of this county, with legal competence to inquire of the offence charged. When this proof is made out, any other act, in prosecution of the same species of treason, wheresoever committed, whether within or without this county, and by whatever witness proved, either the same or a different one, may be received in evidence without objection: I mean as far as respects the locality of such acts.

The law also requires, in the finding of indictments by the grand jury in the first instance, as well as upon the trial of them afterwards by another jury to whom that province belongs, that proof of overt-acts shall be made by the oath of two witnesses, either both of them to the same overt-act, or one of them to one, and the other of them to another overt-act of the same species of treason. If, however, the overt-act charged, should be "of any direct attempt," that is of any attempt actually made against his majesty's person, "whereby his life might be endangered, or his person suffer bodily harm," in that case, by the express and very necessary provision of a late statute of the thirty-ninth and fortieth year of his present majesty, the person charged with such direct attempt, "may be indicted and tried in the same manner, and according to the same course and order of trial in every respect, and upon the like evidence, as if such person stood charged for murder." I am not, however aware, that any such direct attempt is likely to become the subject of consideration upon the present occasion, or under this commission.

It is unnecessary for me to suggest any thing farther to you as to the frame of the indictment, or the number or nature of the witnesses by whom, according to any subsisting provisions of law, it is required to be supported. I will, however, trespass on your attention for a few moments longer, upon another subject to which it has not hitherto been drawn. I mean, as to the probable nature and quality, and the proper legal effect of those acts and circumstances, which are now about to be laid before you in evidence.

It is the natural and usual effect of guilt, so far to blind and infatuate the understandings of those who are busily occupied in the contemplation of its projects, and who have long brooded over the means of its execution, as to produce in them a confident persuasion, that there exist in other minds feelings and inclinations congenial to their own, which dispose them to receive with favour, and

to forward with zeal and alacrity, even the wildest objects of their own detestable machinations.

This persuasion often generates such a degree of rashness and indiscretion in the overtures and communications made by guilty men towards others, whom they seek to associate, or believe that they have already in part associated, to their own designs, as leads to discoveries, by which the public safety is frequently redeemed and rescued from its immediately impending peril. But the greatest part of that disclosure, which most effectually developes the secret and hidden springs of action, and the most dark and fatal designs in every conspiracy, can, in the nature of things only be obtained (as it has in all times past hitherto generally been obtained) from those to whom the facts disclosed were, by a participation of the same counsels, previously known; that is, from some of the conspirators themselves—from persons combined and confederated in the actual execution of the same dangerous designs and enterprises.

The evidence of accomplices, although unquestionably competent, is at all times to be received and acted upon with a just and sober degree of jealousy and caution; and, unless the testimony derived from this source, be of such a nature as to carry internal evidence of its own truth along with it, or be confirmed by other evidence of a less exceptionable description, it affords no safe and satisfactory ground for conclusions, by which the lives, fortunes, and honour of others, are to be materially affected. In weighing, therefore, the evidence of accomplices, a jury, charged with a determination of those important issues in their final and decisive result (which, however, gentlemen, is not your immediate province on the present occasion), will expect to find such a degree of consistency in the testimony of each particular witness,—such a degree of general conformity between the different relations of the several witnesses collectively taken, as to the nature, means, and objects of the conspiracies,—such a degree of confirmation derived to them all from other collateral and concomitant facts and circumstances,—and such a coincidence in the whole, with the main rules of ordinary probability, by which our belief is governed in other cases of a similar nature, as to render the sum and substance of the details, delivered by such witnesses, justly credible. And if, in the result, the substance of the facts related by the witnesses, shall appear to be such and so confirmed as I have above described, juries will of course act upon them as deserving of that credit, which their own

minds, proceeding with the salutary degree of caution and reserve I have already recommended, shall nevertheless be induced to give them.

In applying these observations, however, you will of course bear in mind, that it is by another jury that the guilt or innocence of the persons accused, is ultimately to be decided; and that to you, upon the present occasion, is only committed the charge of diligently attending and providing, in the first instance, that a reasonable and probable ground of guilt be made out, sufficient to warrant you in putting the persons charged therewith upon their trial by that jury, which is afterwards, in the last instance, and upon a full hearing of the evidence on both sides, to pronounce a final verdict of condemnation or acquittal. If, upon the present occasion, such a case of probable guilt be brought before you, it will, of course be your duty, and no doubt, your inclination also, to submit such case to the ulterior investigation and decision of its proper tribunal.

At present, it is only necessary to add, in order to obviate any misconception on the subject which might affect the discharge of your own immediate duty, that to refuse its due and proper degree of credit to testimony, drawn from the source I have alluded to, would be to render the crime of the conspirators, and the extent of the conspiracy, the effectual means of its own entire protection and impunity. A principle of distrust, in respect to the evidence of accomplices, pushed to so extravagant an excess, would be equally repugnant to the obvious dictates of common sense, and the ordinary rules by which criminal justice is administered.

I forbear to detail to you the particulars, even in the limited extent in which they are at present known to me, of the treasonable designs and actings in charge against the prisoners, and which are about to be the objects of your inquiry. By forbearing to do so, every degree of prejudice which might by possibility affect, or be supposed to affect a future trial of any of the parties, will be obviated and excluded, and the ends of justice, I trust, attained with equal certainty, and with greater satisfaction.

If the same desperate chance of ultimate and effectual success in the object of the conspiracy, shall, in your judgment, appear to have proceeded and accompanied this, which has fortunately attended many other dangerous and equally abortive treasons, you will, on that account only, require a greater degree of evidence to prove the existence of a conspiracy, formed and nurtured under such apparently hopeless circumstances; but when

such proof is (if it shall be) made to your satisfaction, your diffidence on this head will perhaps be succeeded by other sentiments—by those of surprise and horror;—of surprise at the extravagant boldness of the enterprise—and of horror at the tremendous consequences which its success might have occasioned.

Gentlemen of the grand jury, considering to whom I am addressing myself, I fear I may have already occupied too large a portion of your time. I have endeavoured, however, to explain to you, as summarily as I was able, the nature of these heads or branches of the crime of high treason, to which your attention will probably be confined on the present occasion; the nature and meaning of the indictment which will probably be submitted to you; the proof which it will require, and such observations respecting the nature and quality of that proof which is likely to be offered, as may enable you justly to estimate its effect and value, and to draw such conclusions from the whole, as reason and justice may require.

You will now in the discharge of your duty proceed to the investigation of a subject deeply affecting the dearest interests of the prisoners and the public, with all the attention and impartiality which those important interests justly require at your hands, and I have no doubt that the result will be such, as a proper consideration of the subject, and of your duty in respect to it, ought to produce.

On the same day, the Grand Jury returned a true Bill against *Edward Marcus Despard, John Wood, Thomas Broughton, John Francis, Thomas Phillips, Thomas Newman, Daniel Tyndall, John Doyle, James Sedgwick Wratten, William Lander, Arthur Graham, Samuel Smith, and John Macnamara*, for High Treason.

The *Attorney General* moved, that the sheriff be required to deliver to Mr. White, the solicitor for the affairs of his majesty's treasury, who is to prosecute for the Crown, a list of the persons returned to serve on the jury, on the trial of this indictment, which was ordered, and the sheriff immediately delivered the same to Mr. White.

The prisoners being set to the bar, lord Ellenborough informed them, that an indictment for high treason was found against them; that a copy of it would be delivered to each of them, together with a list of the witnesses intended to be produced on their trial, and a list of the jurors returned to serve thereon; that the Court proposed to adjourn to Saturday the 5th of February, when they would be arraigned, and their trials

would probably be brought on upon Monday the 7th.
At the request of the prisoner Despard, Mr. Sergeant Best and Mr. Gurney were assigned his counsel.

The prisoner Graham stated to the Court, that himself and others of the prisoners, having been in close confinement, had not been able to retain counsel or solicitor.

Lord Ellenborough informed them, that when they had fixed upon their counsel and solicitor, they might be assigned, on application being made to either of the judges in the commission, at their chambers.

On the 24th of January, Mr. White, Solicitor for the Treasury, caused to be delivered to each of the prisoners, a copy of the indictment, a list of the petit jurors returned by the sheriff, and a list of the witnesses to be produced by the Crown, for proving the said indictment.

SESSIONS-HOUSE, NEWINGTON.

Saturday, February 5th, 1803.

The Court met pursuant to adjournment.

PRESENT.

The Right Hon. Lord Ellenborough.
The Hon. Mr. Baron Thomson.
The Hon. Mr. Justice Le Blanc.
The Hon. Mr. Justice Chambre.

Edward Marcus Despard, John Wood, Thomas Broughton, John Francis, Thomas Phillips, Thomas Newman, Daniel Tyndall, John Doyle, James Sedgwick Wratten, William Lander, Arthur Graham, Samuel Smith, and John Macnamara, were set to the bar, and being arraigned, severally pleaded not guilty.

At the request of John Wood, Thomas Broughton, John Francis, Thomas Phillips, Thomas Newman, Daniel Tyndall, John Doyle, James Sedgwick Wratten, William Lander, Arthur Graham, Samuel Smith, and John Macnamara, Mr. Jekyll and Mr. Hovell, were assigned their counsel.

The prisoners counsel having signified that they should separate their challenges, the attorney general stated that he should proceed first on the trial of colonel Despard.

The Court adjourned to Monday the 7th instant.

Proceedings on the Trial.

On Monday, February 7th, 1803, the Court met pursuant to adjournment, at nine o'clock in the morning.

PRESENT,

The Right Hon. Lord Ellenborough.
The Hon. Mr. Baron Thomson.
The hon. Mr. Justice Le Blanc.
The Hon. Mr. Justice Chambre.

Counsel for the Crown.

Mr. Attorney General [the Hon. Spencer Perceval, afterwards First Lord of the Treasury, and Chancellor of the Exchequer].

Mr. Solicitor General [Sir Thomas Manners Sutton, afterwards Lord Manners and Lord Chancellor of Ireland].

Mr. Sergeant Shepherd [afterwards Lord Chief Baron of the Exchequer of Scotland].

Mr. Plumer [afterwards successively Vice-Chancellor of England and Master of the Rolls].

Mr. Garrow [afterwards a Baron of the Exchequer].

Mr. Common Sergeant.

Mr. Wood [afterwards a Baron of the Exchequer].

Mr. Fielding.

Mr. Abbott [afterwards Lord Chief Justice of the Court of King's-bench].

Solicitor.—Joseph White esq. Solicitor for the affairs of his Majesty's Treasury.

Counsel for Edward Marcus Despard.

Mr. Sergeant Best [afterwards a Judge of the Court of King's-bench].

Mr. Gurney.

Solicitor.—Mr. Palmer, of Barnard's Inn.

The Court being opened, and Edward Marcus Despard set to the bar, the jurors returned by the sheriff were called over.

George Hibbert, esq. and merchant, excused.

John Allnut, esq. and wine merchant, excused on account of deafness.

Frederick Perkins, brewer, not a freeholder of the county of Surrey.

Anthony Brough, esq. and merchant, excused on account of illness.

William Esdaile, esq. and banker challenged by the Crown.

John Kymer, esq. and merchant challenged by the prisoner.

Grant Allen, gentleman and merchant, sworn.

William Dent, esq. sworn.

Robert Dent, esq. and banker, excused on account of age.

Anthony Francis Haldimand, esq. and merchant, not properly described in the panel.

Isaac Railson, esq. and merchant, challenged by the prisoner.

John Wedderburn, esq. and merchant, challenged by the prisoner.

David Haynes, esq. not properly described in the panel.

Edward Knipe, esq. called.

Mr. Sergeant Best.—This gentleman holds

a place in the lord chamberlain's office during pleasure.

Lord *Ellenborough*.—That is no objection. Edward Knipe, esq. challenged by the prisoner.

John Chatie, esq. and wine merchant, excused on account of deafness.

Thomas Calverly, esq. challenged by the prisoner.

Thomas Puckel, esq. and merchant, challenged by the prisoner.

Charles Rogers, esq. and merchant, challenged by the prisoner.

Samuel Beddome, esq. challenged by the crown.

William Davidson, esq. sworn.

Gabriel Copeland, esq. and merchant, sworn.

Isaac Warner, esq. and coal merchant, challenged by the crown.

William Willis, esq. and banker, challenged by the prisoner.

John Rogers, esq. and merchant, excused on account of illness.

Ralph Winstanley Wood, esq. excused on account of illness.

John Mainwaring, esq. challenged by the prisoner.

John West esq. challenged by the prisoner.

Samuel Seawell, esq. not a freeholder.

William Richard Haynes, esq. excused on account of illness.

Isaac Bannister, pawnbroker, not a freeholder.

David Davidson, pawnbroker, challenged by the prisoner.

William Brandon, broom-maker excused on account of illness.

John Griffiths, bedstead-maker, challenged by the prisoner.

Simeon Warner, coal factor, challenged by the crown.

Joseph Meymot, surveyor, not a freeholder.

Samuel Soloway, tanner, challenged by the crown.

Thomas Jackson, coal merchant, challenged by the prisoner.

William Coxson, lighterman, sworn.

William Knight, gentleman, challenged by the prisoner.

John Jackson, coal merchant, challenged by the crown.

Samuel Smith, timber merchant, challenged by the prisoner.

John Baker, sail-maker, excused on account of illness.

Thomas James, grocer, excused on account of illness.

James Vincent, scale-maker, not a freeholder.

Charles Clowes, brewer, not properly described in the panel.

William Whittaker, sail-maker, challenged by the prisoner.

William Holcomb, brewer, challenged by the prisoner.

John Johnson, woollen draper, challenged by the prisoner.

Matthew Clay, taylor, challenged by the prisoner.

William Weston, tea dealer, excused on account of illness.

William Skirrow, the elder, hop merchant, not a freeholder.

William Westall, haberdasher, challenged by the prisoner.

John Farmer, hop factor, sworn.

Thomas Irvine, hop merchant, challenged by the prisoner.

Thomas Johnston, carpenter, not a freeholder.

Henry William Coffin, esq. and hop merchant, challenged by the prisoner.

John Evans, esq. and hop merchant excused on account of illness.

Daniel Slade, hop merchant, not a freeholder.

Robert Maynard, tinman, excused on account of illness.

Jacob Mills, dyer, excused on account of age.

John Davis, esq. challenged by the crown.

Thomas Walker, wool stapler, challenged by the prisoner.

John Varnham, gentleman, excused on account of illness.

Robert Rich, rope maker, challenged by the prisoner.

Nathaniel Carrol, tallow chandler, challenged by the crown.

Jacob Hagen, stave merchant, one of the people called quakers.

James Bridges, cooper, challenged by the prisoner.

William Martin Carter, builder, not a freeholder.

John Collinson, hatter, sworn.

James Lukin, founder, not a freeholder.

James Webber, merchant, sworn.

Gilbert Handyside, founder, sworn.

John Hamer, lighterman, sworn.

John March, esq. and merchant, challenged by the crown.

Peter Dubree, esq. and merchant, sworn.

Richard Bancroft, esq. excused, being an apothecary and man midwife.

Robert Edmonds, gardner, challenged by the prisoner.

John Howard, coal merchant, not a freeholder.

Thomas Brooks, baker, not a freeholder.

Joseph Watson, starch maker, not a freeholder.

Henry Meader, gentleman, not a freeholder.

John Fentiman, builder, challenged by the prisoner.

Thomas Wilmott, gentleman, not a freeholder.

Isaac Bates, brick maker, challenged by the crown.

Thomas Hammond, victualler, not a freeholder.

Timothy Hill, ironmonger, not a freeholder.

Henry Buckley, floor cloth painter, not a freeholder.

John Field, wax chandler, sworn.

THE JURY.

Grant Allen.
William Dent.
William Davidson.
Gabriel Copland.
William Coxson.
John Farmer.

John Collinson.
James Webber.
Gilbert Handyside.
John Hamer.
Peter Dubree.
John Field.

The Clerk of Arraignment charged the Jury with the prisoner in the usual form.

THE INDICTMENT.

First Count.—That the prisoners as false traitors &c. on the sixteenth day of November in the forty-third year of his majesty's reign and on divers other days as well before as after at the parish of St. Mary Lambeth in the county of Surrey maliciously and traitorously with force and arms did conspire compass imagine and intend to bring and put our said lord the king to death.

First Overt Act.—That the prisoners on the sixteenth day of November in the forty third year of the reign aforesaid and on divers other days and times as well before as after did traitorously conspire combine consult consent and agree and attempt and endeavour to seduce divers soldiers and persons serving in the forces of the king by sea and land and particularly one William Francis one Thomas Blades one John Pike one Robert Tomlinson one David Morgan one Joseph Dixon one Thomas Windsor one James Baylis one Job Roberts and one John Rogers then and there being soldiers and persons serving in the forces of our said lord the king by land and also divers other liege subjects of the king from their duty and allegiance to the king and to move procure and persuade the same and other soldiers persons and subjects to unite themselves to and join and associate with and be aiding and assisting to them the prisoners and divers other false traitors in a wicked and traitorous attempt to be by them made with force and arms to subvert the government and constitution of this realm and to depose the king and to attack set upon seize imprison kill and destroy the king.

Second Overt Act.—That the prisoners on the sixteenth day of November in the forty-third year of his majesty's reign and on divers other days with force and arms at the parish aforesaid in the county aforesaid maliciously and traitorously did conspire combine consult consent and agree and attempt and endeavour to administer and cause to be administered to and to be taken by one William Francis one John Pike one John Bird and other of the subjects of the king divers oaths and engagements intended by them the prisoners to bind the same subjects taking the same to be and become mem-

bers of and to be aiding in divers traitorous associations combinations and confederacies of them the said prisoners and divers other false traitors by them formed combined and confederated together for the wicked and traitorous purposes of subverting by force and arms the constitution and government of this realm as by law established and of deposing and of destroying assassinating and murdering the king.

Third Overt Act.—That the prisoners and such other traitors as aforesaid on the said sixteenth day of November in the year aforesaid with force and arms at the parish aforesaid in the county aforesaid secretly unlawfully and traitorously did obtain and procure and in their custody and possession did have and keep divers printed and written cards and papers containing the form and words of divers oaths and engagements purporting to bind the persons taking the same to be of a certain association society and confederacy and not to give evidence against any associate confederate or other person belonging to the same or any other similar society with intent and in order to administer the same oaths and engagements and cause the same to be administered to and to be taken by divers subjects of the king and thereby and by means of the same oaths and engagements to bind the said subjects to be and become members of and to be aiding and assisting in divers wicked and traitorous associations combinations and confederacies of them the prisoners and other false traitors by them formed combined and confederated together for the wicked and traitorous purposes of subverting by force and arms the constitution and government of this realm as by law established and of deposing destroying assassinating and murdering the king.

Fourth Overt Act.—That the prisoners and such other traitors as aforesaid on the said sixteenth day of November in the year aforesaid with force and arms at the parish aforesaid in the county aforesaid traitorously did administer and cause to be administered to and to be taken by one Thomas Blades one Thomas Windsor and divers other subjects a certain oath and engagement purporting to bind the persons taking the same to be of a certain association society and confederacy and not to give evidence against any associate confederate or other person belonging to the same or any other similar society with intent thereby to bind the said Thomas Blades Thomas Windsor and the said other subjects to be and become members of and to be aiding and assisting in divers wicked and traitorous associations combinations and confederacies of them the prisoners and other false traitors by them formed combined and confederated together for the wicked and traitorous purposes of subverting by force and arms the constitution and government of this realm as by law established and of deposing and of destroying assassinating and murdering the king.

Fifth Overt Act.—That the prisoners and

the other false traitors as aforesaid on the said sixteenth day of November in the year aforesaid with force and arms at the parish aforesaid in the county aforesaid did maliciously traitorously secretly and advisedly with force and arms meet propose treat consult conspire consent and agree by lying in wait and by attacking the person of the king to assassinate kill and murder the king and the sooner and better to execute and perpetrate the said horrid assassination and killing they the prisoners did with other false traitors maliciously secretly advisedly and traitorously treat propose and consult of the ways manner and means and of the time and place how and in what manner and when and where they and the other traitors might by so lying in wait and attacking the person of the king the more easily assassinate and kill the king

Sixth Overt Act—That the prisoners and the other false traitors as aforesaid on the said sixteenth day of November with force and arms at the parish aforesaid in the county aforesaid did maliciously traitorously secretly and advisedly meet propose treat consult conspire consent and agree by themselves and with other false traitors with force and arms to attack and seize upon the bank of England and the king's Tower of London and to seize and take possession of the weapons arms and ammunition therein and in divers other magazines and places in and in the neighbourhood of London found and being in order by and with the said weapons arms and ammunition to arm themselves and other false traitors and to fight with kill and destroy the soldiers troops and forces of the king and other his liege and faithful subjects and to raise levy and make insurrection rebellion and war against the king within this kingdom,

Seventh Overt Act—That the prisoners on the said sixteenth day of November with other false traitors with force and arms at the parish aforesaid did wickedly maliciously secretly advisedly and traitorously meet propose treat consult conspire consent and agree to obtain procure and provide weapons arms and ammunition and therewith to arm themselves and divers other false traitors the better and more effectually to set upon attack assassinate kill and murder the king and all their traitorous compassing conspiracies consultations and agreements devices and intentions aforesaid to accomplish and fulfil

Eighth Overt Act—That the prisoners on the said sixteenth of November with force and arms at the parish aforesaid did among themselves and together with other false traitors maliciously secretly advisedly and traitorously meet propose conspire consent and agree that divers of them the prisoners and of the said other false traitors should on the day when the king should next go to meet the Lords spiritual and temporal and Commons in parliament assembled lie in wait for and set upon attack shoot and fire at the person of our said lord the king and that others of

them the prisoners and of the said other false traitors should surround beset and make themselves masters of the house and places wherein the Lords and Commons of this realm were then expected to meet and assemble together in parliament and should also attack and seize upon the Bank of England and the Tower of London and should seize and take possession of the weapons arms and ammunition therein and in divers other magazines and places in and in the neighbourhood of London found and being in order thereby and therewith to arm themselves and to fight with kill and destroy the soldiers troops and forces of the king and other his faithful and liege subjects who should be true to the king and to the government and constitution of this realm as by law established and should stop and detain the mail coaches and other carriages usually travelling from London to divers parts of this kingdom and prevent the same from setting out or departing from London as a signal and notice of the same attacks and proceedings to divers other false traitors dwelling and being in divers parts of this kingdom and as an incitement and encouragement to them to raise levy and make insurrection rebellion and war and a cruel and bloody slaughter of the king's liege and faithful subjects within this kingdom against the duty of the allegiance of the prisoners against the form of the statute and against the peace of the king

Second Count—That the prisoners as false traitors on the said sixteenth day of November in the forty-third year of the reign of his majesty with force and arms within this realm to wit at the parish of St. Mary Lambeth in the county of Surrey maliciously and traitorously did conspire compass imagine invent devise and intend imprisonment and restraint of the person of our said lord the king and the same traitorous compassing imagination invention device and intention last mentioned did then and there express utter and declare by divers overt acts and deeds therein aftermentioned that is to say

The indictment then states the several overt acts similar to those in the first count, and states that each of the overt-acts were *for the purpose of seizing, taking, restraining, and imprisoning the person of the king*

Third Count—That the prisoners as such false traitors as aforesaid on the sixteenth day of November in the forty-third year of the reign of his majesty with force and arms within this realm to wit at the parish of St. Mary Lambeth in the county of Surrey maliciously and traitorously did conspire compass imagine invent devise and intend to deprive and depose the king from the style honour and kingly name of the imperial crown of this realm.

The indictment then states eight several overt acts similar to those mentioned in the first and second counts in the indictment, concluding that such overt acts were *for the purpose of deposing the king from the style honour and kingly name of the imperial crown of this realm.*

The Indictment was opened by Mr. Abbott.

Mr. Attorney General.—May it please your Lordship, Gentlemen of the Jury:—It is so obvious that attention is excited in proportion to the importance of the subject to which it is to be directed, that I cannot permit myself to entertain a doubt but that you are already sufficiently acquainted with the important nature of your present inquiry, to insure to my address, and much more to the evidence which will follow it, the utmost attention you can bestow. I say the importance of the inquiry insures it to me; for there cannot be, either as it respects the gentleman at the bar, or as it respects the interests of the public, a more important question submitted to judicial determination than the question of guilt or innocence, upon a charge of high treason. As it respects the interests of the prisoner, we are all aware that his fortune, his reputation, every thing that is valuable to him in life, and his life itself, absolutely depend upon it; and as it respects the interests of the public, nothing, surely, can be well more important than that a charge of an attack meditated against its best interests in the person of our beloved sovereign, should be carefully and duly examined, and that the conspirators in so base a crime, if such crime be proved to have existed, should be delivered over to that punishment which the law has so justly provided for their offence.

I am however, gentlemen, ready to admit what no doubt the counsel for the prisoner would be glad to have brought forward to your attention, that the great depravity which is required to conceive and to execute a crime of such extensive mischief, so far from operating to create any prejudice against the prisoner, ought rather to give him a fairer claim to the utmost benefit of that indulgent and salutary principle of our law, which holds every man to be innocent till he is proved to be guilty; and, therefore, he will unquestionably be entitled to that which I am sure he will experience at your hands, that the charge should be well watched, that the evidence should be well sifted, and that your minds should be most satisfactorily convinced of his guilt, before you think of pronouncing a verdict against him. But, gentlemen, you will give me leave to express a most confident expectation, that if the fact be satisfactorily proved, if the evidence do distinctly make out the charge, then there will not be, because there ought not to be, any more hesitation in your minds in pronouncing that same verdict of guilty in this case of treason, than there would be in any other capital charge. The considerations to which I have alluded ought, as I have said, to lead juries to be jealous in their examination of the evidence, because it is but reasonable to expect clearer and stronger evidence, to support a charge of that description of guilt from which every human feeling would revolt, than of any other

lighter description of offence, from which the human mind might be restrained by less binding and less multiplied obligations of sentiment and duty.

And, no doubt, these considerations have in some degree occasioned those various cautions and guards which the law has set round the case of a prisoner, charged with an offence of this description. I say, gentlemen, in a *certain degree*, because, unquestionably, they have not been occasioned by them. It must be acknowledged, that the apprehension of fabricated charges being brought against individuals for state purposes, and being unduly and wickedly supported by the weight of government, have been the great causes of many of those provisions. But without waiting to inquire with what degree of justice such apprehension, as applied to former governments, may have been entertained, I think we may say, not with respect to any individuals who are concerned in the government, but with respect to the times in which we live, that such a base suspicion can have no existence. Nor, gentlemen, does it seem to me that it requires, in these times at least, any nice degree of honour, of morals, or of religion, to prevent any government from meditating to act upon such wicked motives. The lowest, most contracted, interested prudence alone would be quite sufficient to protect the public and individuals from such unjust proceedings; for, I am persuaded, every one will agree, that it would be impossible for any state purpose to be answered by any conviction to be procured by such means, which would give any degree of benefit to the individuals who procured it, that could in the slightest degree compensate for that weight of infamy and just disgrace with which their characters hereafter, and their interest at present, would be loaded, if they could be supposed to be guilty of such a crime.

If, however, any one should, from jealousy of power, be indisposed to admit the truth of this observation, as generally applicable to the times in which we live, yet in *these trials*, and *upon this occasion*, there is not the slightest possible ground for suspecting it; for I think we may congratulate ourselves that we have the good fortune to be assembled to the discharge of this duty, serious and anxious as it must be under any circumstances, in a case however, in which there is no other interest attached to the decision of it, than what must always necessarily await an inquiry of so important a nature; in which there is no political, no party, no factious consequence either apprehended or hoped for, as likely to ensue from the event, one way or the other; in which no clamour, no prejudice has been excited, or does exist; in which the public mind is even upon the subject; and in which, therefore, the fact comes to be inquired into, under circumstances the most auspicious for truth and for justice.

Gentlemen, it is not perhaps very necessary, but still it may be no unpleasant circumstance to state to you, that there is another circumstance favourable to the due determination of this inquiry, namely, that the trial is not likely to be extended to any inordinate length; and I trust, that evidence of no very great extent will fully develop the whole of the case. All that will be necessary to attend to in the investigation of it, will be sufficiently compressed, to enable us to dispose of it without the inconvenience and interruption of an adjournment. But I must remember, that any superfluous observations on my part, will tend to impair this advantage; I trust, however, that those which I have submitted to you, will not be deemed superfluous. They have been offered certainly, with no other object, than that while I was awakening your minds to the important nature of your present duties, I might remove every possible degree of prejudice which might exist in them, either as against the prisoner, or against the charge, and thereby produce that unbiassed and unprejudiced state of impartiality, which is, on all occasions, so essential to justice.

I shall now proceed to state to you, with as much brevity as I can, the outlines of the case, and of the evidence by which the charge will be proved; but I am sure you would not wish me, for the sake of brevity, to sacrifice the more important object of perspicuity. I shall endeavour, in as narrow a compass as I can, to possess you with those facts and those observations, which seem to me the best calculated to enable you to appreciate the evidence as you shall hear it, and to apply it with its due weight to the charge.

Gentlemen, the indictment against the prisoner—the substance of which has been very accurately and distinctly stated to you already—contains a charge of high treason alleged against him in three distinct counts, each of them alleging a distinct treasonable intention. The first count containing the charge of intending and compassing the death of the king, is framed under the old statute of king Edward 3rd. The second charge, of intending and compassing the imprisonment and restraint, and the third, the deposition of the king, are framed under a more recent act of parliament, that has passed subsequently to the late trials of high treason at the Old Bailey; under which act of parliament, the intention to imprison and restrain, and the intention to dethrone, are made substantive acts of treason. A fortunate circumstance, perhaps, this likewise for your inquiry; because, that statute having made these two intentions distinct independent and substantive acts of treason, it is very probable, as it certainly is very desirable, that the fact will go to you, unembarrassed with any disputed question in point of law, between the counsel on one side, and the other. For whatever question may upon former occasions have been raised, how far the intention to put any

restraint upon the person of the king, the intention to dethrone him, or the intention to overturn his government, did, or did not, necessarily carry with it the intention of putting an end to his life, is now removed from any necessity of inquiry, or of argument; because, as I have stated, this act having made these two intentions—independent of any of their consequences—substantive acts of treason themselves, there will be no necessity for raising that question. For if the evidence should satisfy your minds, that those overt acts which I shall presently state, or any of them, are proved to have been done by the prisoner, with any one of these three intentions, the charge will be proved, and your painful duty of pronouncing your verdict against him, will necessarily arise.

You probably are aware, gentlemen, that however criminal the intention may be, the law requires that such criminal intention should be manifested by some act, before it can be fixed upon any man,—by some overt act, as the law technically calls it,—some overt act tending to indicate, and to manifest that intention, some step taken, some act done in prosecution, and in furtherance of such intention.

The overt acts, in this case, as they have been already stated to you, I shall state but shortly. I may describe them as falling under two different classes. The first four overt acts of treason, stating a conspiracy by various modes, to seduce soldiers and others from their allegiance, and to make them become confederates with the prisoners, in the prosecution of their treasonable designs; and the other four counts, constituting the second class, detail various meetings for the purpose of carrying into effect, the treasonable intentions that are there laid. The first overt act charges them with conspiring to seduce soldiers and others from their allegiance and duty, and to seduce them to assist the prisoner in a traitorous attempt to be made to subvert the government and constitution, and to kill the king. The second charges them with attempting to seduce the persons there named, to take oaths and engagements to become members of associations, formed for this treasonable purpose. The third charges them with having copies of oaths and engagements in their custody, for the purpose of being administered to persons, to engage them to become members of such confederacy. And the fourth charges them with actually administering such oaths for such purposes. The fifth, which begins the other class of overt acts, charges them with conspiring (by lying in wait) to attack the king and murder him, and for that purpose, with meeting and consulting as to the means of effectuating that purpose. The sixth charges them with conspiring to attack and seize the Bank, and the Tower, and other magazines, where it was likely they might find the means of furnishing themselves with arms, with which they might

resist the king's forces. The seventh charges them with conspiring and agreeing to procure arms, to enable them to exert themselves in the same manner. The eighth charges them with agreeing upon the day, when the king should next go to meet his parliament, that he should be laid in wait for, attacked, and shot, at the same time, that the Tower should be attacked, the Bank, and other depositaries of arms; and that the usual coaches which set out from this town, should be stopped for the purpose of giving notice to their confederates in the country, by whom they expected to be supported.

Gentlemen, it will here be convenient to state the nature of an overt act. To constitute an overt act of treason, it is not necessary that the act should, in its immediate and necessary consequences, lead to the completion of the design: but there can be hardly any act done with the intention of effectuating a treasonable design, that is in any degree capable of conducing to its completion, but what may be an overt act of high treason, let the act, independent of such intention, be ever so innocent in itself: for instance, the getting into a boat upon the river Thames, in itself, independent of any intention with which it might be connected, nothing could be a more innocent act; yet the act of getting into a boat upon the river Thames, with a view afterwards of going to France, for the purpose of procuring an invasion of this country, was the overt act charged upon Lord Preston,* upon which he was convicted. Nothing can be a more innocent act in itself, than putting a letter into the post, but if that letter contains in it some incitement and encouragement to acts which it would be treason in the person writing the letter to incite or encourage; putting such letter into the post, with knowledge of its contents, is an overt act of high treason, and is the act on which doctor Hensley, and others have been convicted;† so here nothing could be a more innocent act than having a card or paper in a man's pocket; but if that card or paper contains the form of a treasonable engagement, purporting to bind persons to such engagement for the purpose of associating to carry into effect some treasonable purpose, the mere possession of that paper, with an intention of so employing it, is, I apprehend, clearly and unquestionably, an overt act of treason.

Having thus explained to you the nature of this indictment, and the charges which it contains, there is one other observation connected in a degree with the legal consideration of this trial, which I would just state before I proceed to the facts; and that is, that the treason is charged to be accomplished by

the way of a conspiracy, and there is this peculiarity attending the charge of a conspiracy, that on the trial of that charge, there are two questions submitted to the jury to which consequently the evidence is to be applied. The first a general question, whether any such conspiracy has existed or not? The next, whether, supposing that conspiracy to have existed, the individual against whom it is charged, is proved to have been a party to it.

With respect to the first question whether or not any such conspiracy has existed, it is obvious that evidence of the act of any of the conspirators is admissible upon the trial of every one, whether done in the presence or not of the prisoner under trial, because the extent, the nature, and the object of a conspiracy, to be carried on by the agency of a great number of individuals, cannot by any other means be discovered than by proof of the acts of those individuals. But whether or not that crime, so proved upon the first and general question to have had existence, is fairly applied to the prisoner under trial, must depend upon evidence strictly applicable to himself, that is, evidence, of his own acts or of acts done with his privity and knowledge; and it is only by such evidence that any individual can be found guilty of that crime of conspiracy, the existence of which may have been proved by general evidence.

Having thus endeavoured to lay before you the nature of this indictment, and the mode by which the charges are capable of being supported in evidence, I shall proceed to state to you the facts of the case. It may perhaps be convenient to give you again the names of the different persons who are charged in this indictment; they are the prisoner at the bar, John Wood, Thomas Broughton, John Francis, Thomas Phillips, Thomas Newman, Daniel Tyndall, John Doyle, James Sedgwick Wratton, William Latimer, Arthur Graham, Samuel Smith, and John Macnamara; of these thirteen prisoners, eleven, including the prisoner at the bar, were taken up on the 16th of November, at the Oakley Arms, at one of the meetings, charged by this prosecution to have been treasonable. Gentlemen, although, for reasons that I shall presently state to you, I propose in the course of this evidence to begin with proving the seizure of the prisoner at this place, and the circumstances attending that seizure; yet I think it will be more convenient, in point of narration, to begin with what I shall have to detail to you of their transactions at an earlier period, and then bring down the history of the conspiracy to the period of this apprehension; and in endeavouring to detail to you the earlier transactions of these conspirators, I shall not take you to a more distant period than somewhere about the spring of the last year. I think it will appear that about the month of March, in the last year, a detachment of the guards, to which one of these prisoners, John Francis,

* See Lord Preston's case, *ante*, Vol. 13, p. 645.

† See the case of Dr. Hensley, *ante*, Vol. 19, p. 1341; and the case of Jackson, Vol. 25, p. 835.

belonged, returned from duty at Chatham barracks, and you will find, shortly after their return, the clearest evidence of the existence of a conspiracy, for the purpose of overturning the government and constitution of this country.

Gentlemen, you will find this John Francis whom I have named, and Wood, another of the prisoners, who is a soldier likewise, and a particularly active member of this conspiracy, proved to be frequently endeavouring to seduce soldiers and others from their allegiance to become members of the association to which they expressed themselves to belong, and which they described as an association of gentlemen, who were desirous of giving the people their liberties and their rights. You will have it in evidence, that this John Francis in particular administered some unlawful oaths and engagements to persons to become members and confederates of this association; you will find him attempting to administer similar oaths to others, without success; you will find him in particular administering that oath to two witnesses whom we shall call to you, two soldiers of the names of Blades and Windsor; and about the time when he administered the oath to Windsor, you will have it in proof that he delivered two or three copies of it to him for the purpose of being employed by him in the same way; it will appear that Windsor, very shortly after he had taken this oath;—whether dissatisfied with the nature of the engagement in which he had entered, or from what other motive you will best be able to collect from his evidence, and the other evidence that will appear;—thought proper to communicate to a Mr. Bownas, whom we shall likewise call as a witness, the existence of this conspiracy, and that at the same time, he produced to him one or two copies of this oath, which had been so furnished to him by Francis. Fortunately Mr. Bownas has preserved that paper, which was so delivered to him by Windsor; he will produce it to you in evidence in this cause, and he and Windsor will state, that, in consequence of this communication, Windsor was advised by him to continue meeting this association, for the purpose of discovering whether there were or not any persons of consequence connected in this scheme.

You will find the copy of this oath and engagement a most important subject of your attention and examination. You will find it to be most important evidence in this cause not only because it is incapable of innocent interpretation; not only because it will appear to be incapable of any other interpretation, than that of endeavouring to procure confederates for this treasonable purpose, but because you will find it furnishing a medium or chain of connexion in the proof, between several of the persons who are charged with this conspiracy; for you will have in evidence, not only that John Francis administered these

oaths, but that John Wood did the same; you will likewise have in evidence, that the prisoner at the bar tendered an oath of this very description to a witness whom we shall call; you will find likewise, that at the time of the apprehension of these prisoners, upon the 16th of November, three similar papers were found in the possession of a prisoner of the name of Broughton, that one was found in the pocket of a prisoner of the name of Phillips, and that another was found, discarded by some of the parties, upon the floor of the room in which they were assembled. Attaching, as I do, so much consequence and importance to this piece of evidence, I think it will be necessary—at least it will be useful—that I should possess you, at this early stage of the cause, with the contents, the substance, and the effect of it: some copies of it are roughly printed upon paper, others are fairly printed upon cards, the cards and papers containing the same words—the words are these.

“Constitution—the independence of Great Britain and Ireland.—An equalization of civil, political, and religious rights.—An ample provision for the families of the heroes who shall fall in the contest.—A liberal reward for distinguished merit.—These are the objects for which we contend, and to obtain these objects we swear to be united.”—

This is the preface to the oath, then follows the oath.

“In the awful presence of Almighty God, I, A. B. do voluntarily declare, that I will endeavour to the utmost of my power, to obtain the objects of this union, namely, to recover those rights which the Supreme Being in his infinite bounty has given to all men; that neither hopes nor fears, rewards nor punishments, shall ever induce me to give any information, directly or indirectly, concerning the business, or of any member of this or any similar Society, so help me God.”

I have myself had the frequent opportunity of observing, when persons have been charged either with seditious motives or with treasonable motives connected with their political pursuits, that it has been not unfrequent to endeavour to prevail upon the jury, who were to try that charge, to believe, that their objects were merely some alteration, in the nature of a reform, in the existing frame of things, to be obtained by legal, by regular, by peaceable, by constitutional means. I have no gift of prophecy—I know not whether any such attempt at construction will be put upon this paper—perhaps, however, it may; and as far as the word *constitution* describes the objects of these persons, understanding it, as in candour and fairness we ought to understand it, the constitution of our own country, unquestionably there would be no quarrel with them on that account. With re-

spect to the independence of Great Britain and Ireland, if by that is meant the independence of the united kingdom of Great Britain and Ireland from all foreign authority and control, undoubtedly there could be no objection to such an object; but if by the independence of Great Britain and Ireland, the disunion and separation of the two was intended, I am sure you will not suspect me of intending to admit, that that would be an innocent object.—“An equalization of civil, political, and religious rights.”—I have heard, indeed, not unfrequently, very strained attempts made, to soften down objects so described. I have heard it argued, that by such terms nothing more was meant, than the equal right to the equal administration of justice under equal laws, and the equal protection, under those laws, to the unequal proportion of property, or of any political right or privilege, which a subject might constitutionally possess. It would I think be difficult to put that construction upon these words; nay, it seems to me to be clear, that an annihilation of all distinctions and inequalities in rank, property, or political right whatever, is the fair, the reasonable, and the necessary interpretation of them; and, indeed, that any other interpretation cannot be the meaning of this paper is obvious to demonstration; for if the equal right to equal justice was the object of these parties, it is that which every Englishman does enjoy, under the British constitution, in an infinitely greater degree than any man in any other age or situation in the world ever did enjoy; it therefore could not be an object for which they would have to contend; it could not be an object to obtain which they would be united; it would not be an object or right, which God of his infinite bounty having given to all men, it was their purpose to recover. These are expressions, that are not applicable to any mere improvement in existing circumstances, but they plainly demonstrate an intention of obtaining something which they had not before. But, gentlemen, if peaceable means, if constitutional means were the means by which they were to procure these constitutional objects, surely, surely, there would be no room for heroism in a contest of that description; surely there would be no danger of any of the persons engaged in it falling in the contest; the contest in which a hero is to fall, must be necessarily not a contest of mind, of argument, and of reasoning, but of bodily strength, opposed to existing power if not to existing laws. I think, therefore, that this oath is perfectly incapable of innocent interpretation; and I trust that what I have already said is sufficient to characterize and develop the nature of it, and sufficient likewise to characterize and develop the nature of that society which was formed upon this oath, as constituting the bond of union among its members. If, however, ingenuity can be so applied to this paper as to make it equivocal

in its interpretation, then the rest of the evidence, and the conduct of the conspirators will, I trust, sufficiently remove that ambiguity.

Gentlemen, I was stating to you, that the prisoners Francis and Wood particularly were found to be active members of this conspiracy and that they were administering oaths of this description; you will find by the evidence that about the middle of the summer they thought it inexpedient to meet always at the same place; that for the purpose of avoiding suspicion, they agreed to meet at different places; and in the course of the evidence, I think, I shall have to show to you a great number of different public houses at which they met; the names of some occur to me, the Ham and Windmill, in Windmill-street, near the Hay-market; the Black Horse, Oxford-road; an alehouse of the same name in St. Giles's; the Bleeding Heart, in Charles-street, by Hatton-garden; several public houses near the Tower, in the Mint, in the Borough; the Flying Horse, at Newington, in this county, and the Oakley Arms, in St. George's fields, are some of those which occur to me at the moment.

Gentlemen, you will have it in evidence, that at those meetings, some part of the plan was to seduce the soldiers; and in order to prevail upon them to come there, to treat them with refreshment. Several soldiers will be called who were thus invited by the prisoners; they will tell you, that at those meetings it was customary to have toasts given, and sentiments favourable to liberty, and the extension of rights; that it was not unfrequent to have consultations held with respect to the necessity of an extension of the rights of the subject, and intimating that an improvement, according to the model of France, would be a good thing to be adopted. You will find attempts made to procure from soldiers, signatures and engagements to unite with them; and though some of them unfortunately listened too much to the invitation, others you will find from the first revolted at it.

Gentlemen, in the course of the summer, the prisoner John Francis was ordered with his detachment of the guards on duty to Windsor. It will be necessary to follow him and Wood there. You will find them pursuing the same plan of endeavouring to administer oaths there to soldiers, and to a person we shall call who is not a soldier. At the same time the other conspirators were not idle in town; there was a communication kept up between them. We shall show, by the evidence of a person of the name of Connell, that Wratten, one of the conspirators, was sent down to Windsor for the purpose of communicating with some soldiers there; that he returned back; and that he had the expenses of his journey paid him by the society. Wratten was accompanied by one or two more upon this mission. Similar meetings, of which I shall not trouble you with any particular ac-

count, were continued during the summer months of July, August, and September; and at some of these you will hear a little of what passed. But I own to you, I am desirous in my opening, and shall rather be desirous in the evidence, to run over this part of the case as cursorily and generally as possible, my object in entering into it at all, being more to furnish you with a general idea of the nature and plan of the conspirators, and of the means which they adopted for the purpose of enlarging and strengthening their numbers. In the course of the evidence you will find some very extravagant projects, which will be spoken to by one or two of the witnesses; particularly about the time of Bartholomew fair; it was the eager wish of Francis, and some others of the soldiers, to have the day appointed for actually making an attempt upon the Tower. I state this to you shortly; I only just mention it, because I do not really place much reliance upon it, because, as far as respects colonel Despard upon this occasion, he will be proved to have interfered in restraint of the too great precipitation of his confederates. But you will find, that on the day in which some of these extravagant traitors meditated actually carrying this project into effect at the Tower, the prisoner was upon Tower-hill, and had influence and authority to disperse them, acquainting them that the time was not yet ripe.

I shall hasten in the statement of my evidence to the latter scenes of this conspiracy; because, during the earlier part of it, excepting in the instances I have stated, and that I referred to lately, of endeavouring to administer these unlawful oaths, the evidence will not bring him very forward in the conspiracy. But when it appeared to approach a little more to its maturity, colonel Despard appears a more conspicuous character. The events of the last week previous to his arrest will furnish me, I think, with no less than four opportunities of showing him connected with these conspirators in most treasonable communication upon the design.

On the Tuesday preceding the Tuesday on which they were arrested, on the 9th of November, he was at the same Oakley Arms, in company with some of the same traitors, in whose company he was found on the 16th. Broughton is a name I particularly recollect, who, I think, was the person that invited the witness, whom I shall call to prove his having been there, and represented to him that the time was now approaching when it was intended that a great stroke should be struck. You may recollect, that his majesty had intended to meet his parliament the last session a week sooner than he actually did; it was intended he should have met parliament on the 16th instead of the 23rd; and on the 16th it was the intention of these conspirators, supposing his majesty had, on that day gone down to the House, to have carried into effect this plan of destroying him. On the night of

the 9th of November, I shall show the prisoner to have been present amongst these conspirators. I shall prove him likewise to have been present at a meeting that will be very particularly deserving of your attention on the Friday. The same Broughton will be proved to have prevailed upon two persons, whom we shall call to you as witnesses, Windsor one of them, and Emblin another, to go on the Friday to the Flying Horse, at Newington, Broughton telling them that if they went, they would meet a nice man there, and find that things were in a fine train; they accordingly went, and the fine man whom they there found, and to whom they were there introduced, was colonel Despard, the prisoner at the bar.

Gentlemen, I am sure you will go along with me in thinking, that an accurate detail of conversations will be much better stated by the witnesses than by any relation of mine; but it will be proper for me just to give you the general tendency of the conversation which passed. That meeting lasted about two hours, and the plan of carrying this treason into execution was the main subject of conversation. The mode in which the Tower was watched and guarded was one topic of conversation, with a view to see what facilities or difficulties might attend an attack upon that place. The principal thing, however, which will require your consideration, was the plan of intercepting the king in his way down to the Parliament House; this was discussed; the difficulties attending it, the mode in which these difficulties were to be met and got rid of, were parts of the conversation supported by different persons. I think it was Broughton who suggested, that one good way of doing it would be to shoot the horses of the coach, and then the coach would necessarily stop; upon that it was observed by one of them, that the Life Guards who were surrounding the coach, would cut down any man that attempted to approach it; and on this occasion the prisoner at the bar made use of expressions which will be particularly spoken to, and will be particularly worthy of your attention. Upon its being stated that the Life Guards would resist any attempt that should be made upon the coach, and cut down any man who should approach it, and on its being asked who would be found to do it, he said, that if no one else would do it, he would do it himself, accompanying it by an expression strongly demonstrative of the turn and frame of his mind at that moment, and of the desperate extent to which he meant to carry his treason; accompanying his expression with no less remarkable words than these: "I have well weighed the matter, and my heart is callous." Gentlemen, this cannot be equivocal; callous indeed must be the heart which meditated the plan that I charge against him; and the expression could hardly be used with reference to any other.

At this meeting, Windsor was introduced

for the first time to colonel Despard; he recognised his name, and stated, that Wood had mentioned Windsor to him, and he therefore desired Windsor to meet him on the Monday next, with three or four more clever fellows, soldiers, at the Tyger public house, on Tower-hill. Windsor, according to the appointment, went to the Tyger public house on Tower-hill, on the next Monday, the 15th of November. Colonel Despard came there; for some reason or other it was not a convenient place; it did not suit him to enter into conversation there, and he proposed that they should adjourn to Whitechapel, and as it might be an awkward circumstance for him to appear in the streets with Windsor and another soldier (for Windsor had brought another soldier of the name of Winterbottom with him) who were in their uniforms, as it might raise some suspicion for the colonel to be seen walking in the streets between two common soldiers, he therefore proposed, that they should go by different ways and meet in Whitechapel; they did so. Colonel Despard desired them to wait for him while he was making some inquiries after a soldier he wished to see, which they did accordingly. The colonel soon returned with a man of the name of Heron, a discharged soldier, and then they all went together to another public house, the Coach and Horses, in Whitechapel; there the colonel, Heron, Windsor, and Winterbottom, had some bread and cheese and porter, or ale; some refreshment of that sort. It fortunately happened, that there were two other soldiers who were quartered at this house, they were invited to partake of the cheer that was going on; having dined, however, they declined eating with them, but they partook of their liquor.

The conversation which passed between colonel Despard and Windsor at this place, will be certainly an important subject for your consideration; and that some conversation passed between them upon this occasion will be confirmed by those two soldiers who are perfectly innocent and unconnected with the conspiracy. They were not permitted, undoubtedly, to hear any treasonable part of their discourse, but however, that Windsor, Winterbottom, Heron, and the colonel were there, at this alehouse, refreshing themselves with bread and cheese and porter, will be proved and confirmed by this most unsuspected testimony. The colonel was not satisfied with Windsor's having brought only one person, he wanted several, and he proposed that they should have another meeting, when Windsor should bring to him six or seven good clever fellow-soldiers, with whom they might arrange the plan for taking the Tower. In the course of the conversation here with Windsor, you will find the colonel expressing likewise the extent to which he meant to carry his treasonable purpose, the necessity he thought there was for taking away the life of the king; that by taking the king out of

the way, he seemed to think that the people would have their liberty; wishing, however, to have another meeting with Windsor, when these might be more soldiers together, it was agreed they should meet the next night at the Oakley Arms.

Gentlemen, I think it material now just to state to you, that though no steps were taken to arrest these prisoners till Tuesday, the 16th of November (the period to which my narration has now led me), yet government were not unapprized of their transactions; they were well watched; they were attended to as a subject of such interest and importance required; but as long as their plans and schemes were at a distance, or were of so wild and extravagant a nature as to be capable of being prevented without any manifestation of the interference of government, it was thought better not at that time to interrupt them. It was a difficult and embarrassing question to determine at what period such a conspiracy should be interrupted. If it had been interrupted at an earlier period, one or other of these unpleasant circumstances would have occurred, either the parties would have been brought to trial upon evidence to be obtained from these sources from whence so much useful information was then, and had for a long time before been derived to government, and then the future usefulness of those sources of information would have been entirely destroyed, or it would have been impossible to have proceeded to the trial of them at all; and this other most unpleasant circumstance must have unavoidably occurred, that government having arrested these persons, and not bringing them to trial, must have had recourse to parliament for an indemnity, a measure never, without the most pressing necessity, to be adopted. But when this scheme was so near its accomplishment, when the day of its execution was at hand; when a direct attempt on the person of the king was to be made, there was no longer room to trust to ordinary precautions, it was then become necessary, at all risks and all hazards, to crush this conspiracy, which had arrived at its maturity, and at least to go so far as to prevent the possibility of those individuals, who meditated an attack upon the person of the sovereign the next week, from being at large to effect it. For this purpose, measures were taken to arrest them, and it will no doubt give you and all other honest and good subjects satisfaction, to know, that the discovery obtained by the arrest itself, and the information subsequently procured, has produced such a body of proof against the conspirators as has enabled me to bring these prisoners to their trials, without disclosing those sources of useful intelligence, which will remain unsuspected and unimpaired, for the future security of the state.

Measures were, I say, therefore, taken to apprehend the persons of the prisoners on that

night. When the officers came for that purpose, there were assembled to the number of about thirty persons, in an upper room, at the Oakley Arms; they were of the lowest order of society—day-labourers, journeymen, and common soldiers. You will find them all or nearly all, of that character and description: there was, however, one illustrious exception, in the person of the prisoner at the bar. You will have it in evidence, that these papers to which I before alluded, were found on the persons of some of them. Of the thirty persons who were arrested, several have been discharged: whether all of them were or were not implicated, and to what degree they were implicated in the treason that we charge against those whom we have in custody, is a question upon which I can give you no satisfactory information. Inquiries certainly were instituted for the purpose of distinguishing the cases of the persons there present and the result of those inquiries was, that it did not seem expedient to detain more persons in custody than those who are brought before you under this indictment.

Gentlemen, I cannot, at this time, pass by this meeting, and the occurrences which will be proved to have taken place upon the seizure of the persons found there, without pressing it upon your notice as one of the most important features of the whole case; as one which will furnish you with such satisfactory explanation, which will furnish you, by anticipation with such ample confirmation of the credit of the witnesses who will afterwards be called, that you cannot too strongly bear the circumstances of it in your minds. I shall, therefore, after having carried you forward with a very few more observations to the end of my narration, have occasion before I sit down, to revert for a few minutes to the effect which that meeting, and the circumstances attending it, will have upon the case.

Gentlemen, after these persons were arrested, Windsor, who was appointed to meet colonel Despard there, came to the house; he was not one of those who were arrested, he came to the house, and hearing what had passed, he immediately offered himself to the gentleman, who attended upon the execution of this warrant, as a person ready to come forward and give important information upon this subject; he was not taken into custody, he was desired to attend the magistrates the next morning; he did attend, and he gave information, upon which the persons were committed.

Gentlemen, this is the nature of the circumstances which we shall have to give in evidence against the prisoner at the bar; and I apprehend that the overt act, which upon this evidence will be proved against the prisoners individually, will be first in order, though certainly not first in importance, the overt act of attempting to administer one of those oaths to William Francis, a witness whom I shall

call; the other overt-acts will be those of the other class, namely, meeting for the purpose of consulting as to the mode of way-laying and arresting the person of his majesty, at these different meetings as detailed in the four last counts of the indictment: and these will, by strict and pointed evidence, be brought home to colonel Despard himself: but if I satisfy you that the colonel was a conspirator with John Francis, was a conspirator with Wood, was a conspirator with Broughton, then the overt acts of Broughton, of Wood, and of the others, whom I shall prove to have been co-conspirators with him, are the overt-acts of this prisoner himself, for which he will be responsible as well as they.

If, gentlemen, you see no reason to disbelieve the story, as it will be related to you, there can be no difficulty as to the effect of it, when the facts are, by several witnesses, brought home to the prisoner at the bar. I am not aware of the possibility of the case being answered: that it will be observed upon, and that it will furnish matter for acute observation, I have no doubt; and where is the subject to which ingenuity can address itself upon which important observations cannot be made?

But it occurs to me, that there are perhaps two or three observations which will be more particularly pressed upon your attention, and upon which it may not be improper to endeavour to anticipate some remarks. You will hear perhaps of the improbability of the story, from the desperate nature of it, and the little likelihood of its succeeding. You may perhaps likewise hear of some improbabilities attending the detail of the story itself, but I should think, that the main stress of the observations will be applied to the credibility of the witnesses for the crown—witnesses, unquestionably whom we must offer to you as accomplices, embarked in different degrees in the same conspiracy.

And first, gentlemen, with respect to the improbability of this story, from its desperate nature, from the little hopes any rational man could entertain of its success, and its fatal consequences if discovered; I cannot, certainly, object to this, as a fair ground of observation, and as a proper test by which to examine the probability of any story; but I am persuaded you will go along with me in thinking, when you come to enter into this examination, that it must be entered upon with great caution, and with great allowance for the different measures of probability, which your cool and disengaged understandings will present to you, from those which would present themselves to persons eagerly embarked in the design, anxious in the pursuit, and who, from having long contemplated as an important and valuable object, that which it was at last to lead to, overlooked the intervening obstacles that stood in their way.

Gentlemen, there are enthusiasts of various descriptions; there are enthusiasts for good,

as well as for bad purposes; there are political enthusiasts and religious enthusiasts; but it is in the nature of enthusiasm not only to magnify the value of its object, but also to underrate the difficulties which are opposed to it. In endeavouring therefore to examine this case, with a view to considering how unlikely it is for those persons to have embarked in it, you must endeavour to consider, not how improbable its success appears to you, not how strange that a person should engage in so rash, so dangerous, and so wicked a design, but how probable its success was likely to appear to them, and how important and great the value of this object was in the estimation of their heated imaginations; and what great sacrifices they would be disposed to make, what great risks they would be prepared to run, upon any the faintest prospect of succeeding. If it be possible, you should put yourselves into their situation; you should in imagination suppose yourselves political enthusiasts of the same kind, misled by all the nonsense, and all the villany which the French revolution has set afloat in men's minds. You should consider yourselves as having long looked upon treason as no crime; that rebellions and revolutions were the fields for the best exertions of virtue and patriotism; that your habits and conversations had been almost solely with persons who had been enthusiasts likewise in the same pursuits; that you had been habitually feeding each other's hopes, inflaming each other's passions, stimulating each other's eagernesses; that you had been systematically endeavouring, by all possible means of exaggerated and false statement of your numbers and strength, to seduce others to co-operate with you in your designs; and then you will have to consider, whether under the influence of all these feelings and passions, so inflamed and so exasperated, the same estimate of the probability of success would be formed, as by the cool reflexions of your minds, in their ordinary frames, uninfluenced by any such delusions. I am certain, a very little reflexion will be sufficient to show how inaccurate a standard your view of these probabilities will afford, to measure the extent to which their minds may have misled them, in calculating the likelihood of success. Add to this, the possibility, at least, of a plan of this kind presenting itself to persons dissatisfied, angry, disgusted with the world; disappointed vexed and irritated, by the pressure possibly of those very inconveniences which their own indiscretions may have brought upon them, and again ask yourselves, whether to such minds so influenced, so misled, and so put off their bias, such an object would present itself in the same view as it would present itself to you.

Gentlemen, there is one circumstance also of improbability in the detail of the story which will perhaps be pressed upon you, to which likewise I will shortly advert. I have

told you already, that of the thirty who were taken up at the Oakley arms, full half were discharged. It will probably be assumed, that government would not have discharged them if they had not been convinced of their innocence; and it will be urged to you very strongly how improbable it is that traitors, so nearly upon the eve of accomplishing their treasons, should meditate the plan, and arrange any thing respecting it, in a place which was open to the intrusion of innocent strangers. Now if it be assumed that they were discharged because government did not think there was a case sufficient to put them upon their trial, it is true; but if it be assumed that they were discharged because they were thought to be innocent, there will be no foundation for that assumption. An anxious inquiry, as I stated, was made into the distinctions of the several cases. I believe you will find, in the course of the evidence itself, that that inquiry was in part mistaken, and that several of those who were enlarged were, by evidence obtained afterwards, clearly implicated in the conspiracy. It is true, they have not been since retaken. It has been thought expedient to see what the effect and result of these trials might be, previous to any fresh attempt to re-take them; and on this mode of proceeding, at least, if any charge can be grounded, it will not be the charge of too great severity, or too much eagerness to prosecute.

Gentlemen, I will venture to say, that if every one of these men had been detained under the charge of treason, till after the event of this trial had been known, no man living could have blamed the government who so detained them; but the object of inquiry on the part of government was *not how much* severity might be justifiably exercised against the persons who were seized, *but how little* was absolutely necessary: having said this, I must leave the learned gentlemen to make what observations they can upon this part of the case. They will find, however, from the nature of the evidence which we shall lay before you, that there were persons at that meeting unquestionably there for the first time; that the treasonable conversations which passed (treasonable conversations, most important for your consideration, which will be spoken to by two of our witnesses, Emblin and Connell) will appear by the same evidence to have passed in small circles and parties, not extensively and generally addressed to the whole room; and I think therefore that it will appear to have been no unwise distinction to be taken in such a case, that where there was not at the time collateral evidence to fix individuals with some knowledge of the guilt, their merely being at the meeting should not form sufficient ground for their detention.

Having made this observation respecting the probability of the story, I will say a few words upon the other topic, which I suppose

will furnish my learned friends with observation; namely, the credibility of the witnesses for the Crown, standing, as some of them unquestionably do stand, in the light of accomplices to that treason which their evidence is to prove. The observation I apprehend will not be attempted to go farther than to their *credibility*; it will not be contended on the part of my learned friends, that an accomplice is not a *competent* witness; and it shall not be contended by me that an accomplice does not require to be confirmed by collateral testimony, before a jury should implicitly give him credit. When I say accomplices ought to be confirmed by collateral testimony, do not mistake me to state that every word which an accomplice utters must be spoken to by some other witness, because if that were so, there would be no need of an accomplice in any case but that of treason; but the confirmation that is to be required for an accomplice, is to show that the story, as related by him, coincides with other circumstances, which are by unexceptionable testimony proved to have existed, and when such circumstances, falling in with the testimony of the accomplice, cannot so easily be accounted for upon any other supposition than that of the truth of his story. When I say that is the state of the evidence, I apprehend the accomplice is sufficiently confirmed, and that there can be no difficulty in giving complete credit to his testimony.

With respect to any other circumstances that may appear reflecting on the character of any of these accomplices, independent of this transaction, I know nothing of them: if there is any thing against any of them, it may be made appear by the gentlemen on the other side; whether such thing exists or not, I know not; but I cannot possibly disguise from you that when I call a witness who, as an accomplice, has been embarked in so very desperate a crime, I cannot but feel great apprehension that the other parts of that man's life may not be altogether and entirely unimpeachable; it is not very likely, I think, that persons should reach to this extent of crime, without having gone through some criminal progress before they arrived at it. That this observation will apply to some of them, and will not apply to others, is most probable; but I rather think that my friends, in their discretion, will be a little cautious of showing these witnesses to be of such very degraded, such low, and such infamous characters, because if they are of that description, I think my friends' difficulty will be a little increased to account for the circumstance of colonel Despard making such sort of worthless and low persons, so frequently as he will by unquestionable evidence be proved to have made them, his associates and companions, if not his friends.

With a view to see how accomplices may be confirmed, perhaps it will not be inconvenient to take you through the case of one of

our witnesses by way of illustrating what I mean. I will take the case of Windsor, whose name I have mentioned, and who unquestionably will be considered by my friends as an accomplice, how deeply, and with what ultimate determination he was embarked in the design will be best collected from his evidence. I told you he was not taken up at the Oakley Arms; that he came there when the alarm was raised, and when he might have escaped; that he did not choose to take the opportunity of escaping; but that when, as yet at least, there had been no suspicion whatever excited against him, he offered himself as a witness, and engaged to attend the examinations before the magistrates the next morning, and came accordingly and disclosed the whole extent of the treason. Now this is not a circumstance wholly to be passed by; because it places him not in the situation of an accomplice, who having been already fixed by evidence with the crime himself, endeavours to relieve himself from the pressure of that evidence by throwing it upon somebody else; he stands certainly in far different circumstances; what his motive was may be for you to collect, and it is not for me with any certainty to state; it might be that he was struck that moment, for the first time, with compunction; it might be that he thought the opportunity had occurred which he will tell you he had been long looking for, when the discovery should be made for the purpose of bringing to the knowledge of government the existence of this conspiracy; it might be that he anticipated, that if he did not come forward and give evidence against others, others would come forward and give evidence against him; either one of these three motives, or all these three motives together in combination, may be those on which he acted at the time.

Gentlemen, the next thing to be observed with respect to his testimony will be, as I stated, that he was sworn in the summer of last year; that recently after he was sworn in, he came to Mr. Bownas, and delivered to him one of these cards, and, in consequence of Mr. Bownas's advice, continued to belong to the society, in order to be instrumental in discovering and defeating their treasons. Mr. Bownas will be called, and will confirm that part of the story. Then as to the meeting at the Flying Horse, where colonel Despard, Broughton and others held the very treasonable conversation which I have stated, you will find him confirmed by another accomplice, of the name of Emblin, who was there at the same time, and likewise confirmed in the most material circumstances respecting that meeting by the mistress of that public house, who will tell you, that there was this meeting at this time, will state what she knows concerning it, and will confirm the witness in the remarkable and desperate expression which he ascribes to colonel Despard. Following his story, we find him at White-

chapel, in company and close conversation with the colonel; and the fact of his being so will be confirmed by two soldiers, perfectly innocent of this crime. Pursuing his story forward, he will tell you he was appointed by the colonel to meet him, on the evening of the 16th, at the Oakley Arms. The events of that evening, as spoken to by the officers, will confirm that part of his story, and proving the colonel there according to such appointment; indeed the meeting itself appears to me to be the strongest confirmation of all. As against the prisoner at the bar, if the evidence of these witnesses is not to be believed, I am persuaded you will wait with great anxiety, and great impatience, to hear from his counsel how it happened that a man of colonel Despard's education, of his manners, of his character, of his situation and rank in the army, should be at a meeting so constituted, and assembled for such purposes.

Gentlemen, I have told you that the company in general consisted of the lowest orders of society, common soldiers, common labourers, and journeymen. The character of the meeting itself, and the guilty purposes of some of the persons at least present at that meeting, will be made out by unquestionable proof, for when you are canvassing the credit due to an accomplice, this I think must be admitted, that there is no withholding credit from him, so far at least as he speaks to his own guilt; for if there is no crime, he is no accomplice; if there is no conspiracy existing, there is no occasion for any discovery on his part, to protect himself from danger; he could have no danger to apprehend, if he were conscious of no crime; therefore the fact of the existence of the crime will be pretty satisfactorily proved by the evidence of the accomplices themselves; but that will not be all. I state distinctly that the evidence of these papers, found in the possession of some of the prisoners, and at the meeting, necessarily gives a character of guilt to it; for what innocent purpose, or by what strange accident, could these papers and engagements have got into their possession? It is not immaterial to observe, that at the time when these papers were found upon their persons, and at the present moment, the administering an oath of this description, if it contained nothing but its purpose of secrecy, would, if acted upon, be a felony. Looking at the engagements and oaths themselves,—which, as I have examined so fully before, I will not re-examine now,—but observing generally upon them, I will say that those who acted upon them, who either took them themselves, or proposed them to be taken by others, will not easily relieve themselves from the crime of a treasonable intention of violence against the state; and if the nature of these papers is such as that they could not be acted upon without treason, let me ask how, consistently with innocent purpose, they were possessed? if they were so, it is incumbent upon them to

prove it; but without any proof, I am sure the fair presumption from the possession of these papers, which could not be used but for purposes of guilt, must be that they were possessed for such purposes; and that they were possessed for precisely those guilty purposes for which they were peculiarly calculated to be employed.

Such is the nature of these papers, and such the inference fairly to be drawn from the possession of them.—“But on colonel Despard—none of these papers were found.”—True; no such paper was found upon colonel Despard—attempts indeed will be shown to have been made by colonel Despard to swear in a person upon a similar paper—but no such paper was found upon him; does it therefore follow that he is relieved and rescued from the inference to be drawn from the possession of this paper, against those who had it? I apprehend not. Consider the condition of colonel Despard, his rank in life, his situation in the army, his manners, and his carriage. There is something that sufficiently marks him, as bred and educated for better things, and more liberal society. Was it accident that led him—unaccompanied by any one person, approaching, though at ever so great a distance, to his own condition in life—was it accident that led him into the upper room of an ale-house, to a meeting of the lowest description of labourers. I shall show by evidence, indeed, that it was not by accident, that it was by design, by appointment, for the express purpose of meditating and arranging the very treason charged by this indictment. But that evidence will require confirmation, and I am now examining how these circumstances confirm it; and how that circumstance particularly, of a person of his description, manner, education, and station in life, being found in the midst of these low-lived persons, detected as they were with these papers of treasonable import upon them—how is this to be accounted for? How, I mean, is this to be accounted for innocently? How are my friends who are of counsel for colonel Despard to account for it? I can account for it very easily; but how my friends, whose object will be to remove the imputed guilt, and not to fasten it, will deal with this circumstance, I am at a loss to anticipate. I can explain it; my hypothesis will explain it most satisfactorily; my hypothesis is, that meditating and planning a most desperate act of treason to be executed in the very next week, by the lowest and basest of society, colonel Despard was at that time assembled with some of those very persons by whose instrumentality he was to effect it. My hypothesis is, that this meeting was assembled for the purpose of arranging or communicating this plan; that colonel Despard was the author of it, was the leader to whom the rest looked up for advice, to whom the rest looked for its execution; with my explanation all is easy. If there were this plot, if this plot were

to be carried into execution the next week by persons of this description, and if colonel Despard had devised it, was to head it, and to conduct it, where would you expect to meet him, but in a society of this very description of persons, by whose means his plot was to be accomplished?

I am persuaded that if similar circumstances were to occur in the trial of any other offence, no difficulty would be felt. Suppose a burglary committed, and some plate stolen, and suspicion to attach on a particular place, as the resort of the persons who had committed it, and that two persons with a respectable silversmith in their company, were found in that place, a low alehouse, for instance, at St. Giles's; that these two persons had some of the plate upon them which had been stolen; if another person came in at the time when these men were arrested, and stated—"I will give you important evidence; I confess that I was with these other men, that we were prevailed upon by this silversmith to embark in this burglary, and we were to meet this evening and divide the spoil; he himself appointed the meeting, when I was with him yesterday morning, at a public house in Whitechapel." This would be the case of an accomplice that would require confirmation, and confirmation it would have abundantly by finding these persons together, with the stolen property upon some of them; they being proved likewise to have been before at the public house in Whitechapel, where this accomplice stated the appointment for the meeting to have been made. Would any jury hesitate, upon all these circumstances, to believe the accomplice? Here the confirmation is of the same nature. I do not say that the mere circumstance of finding the prisoner at this place, in such low society, should of itself convict him of high treason; but I am examining to see whether the fact of his being there does not confirm the testimony of the accomplices. I am not putting it to you that you should convict him of treason because he was found in bad society; but I promise you that witnesses who were surrounding him, when the conversation passed, shall, if you believe them, completely condemn him out of his own mouth. Then I put it to you whether there can be a greater or stronger confirmation of the testimony of an accomplice than by proving such circumstances as these—circumstances which cannot possibly be accounted for, except upon the supposition of the criminal purpose existing in the mind of the person on whom the accomplice charged it? whether there can be a stronger confirmation of an accomplice than showing other facts, with which his story perfectly coincides, and which are perfectly irreconcilable with the idea of innocence, and unaccountable upon any other grounds.

It seems to me, that in another case—the case of felony—you could have no doubt; and I am persuaded, that you have no other means

of getting at facts and proof in a charge of treason than in one of felony. If the evidence were such as would fasten upon this prisoner a crime of a smaller denomination, it is such as to entitle me to expect, on the part of the crown and the public, that your verdict should be pronounced against him in this case; and I trust you will have no extraordinary feeling that should lead you to think that you are to endeavour to extricate the prisoner, by any strain of ingenuity or of conscience, in this case, which would not be properly applicable to another. Undoubtedly the nature of the charge is such as requires, as I stated, your most anxious attention; it is one of the blackest and most mischievous which can come before you; but when it is brought home to the prisoner, the effect of these considerations is at an end. That he will even then, and to the last, be entitled to the fullest possible measure of justice at your hands, is that which unquestionably is true. His title to justice he can never forfeit; it cannot be forfeited, in a court constituted as this is, administering English law, by an English jury, under the direction of English judges; but that there shall be any feeling of humanity which should be restlessly anxious to extend itself in his favour, beyond those bounds within which both public and private duty confine it, is that which the prisoner has no title to expect, is that against which the public have a right to protest and to reclaim. I fear I have troubled you too long; I shall now proceed to call the witnesses, and if I do lay before you the evidence as I have opened it, confirmed as I have stated that it will be confirmed, I apprehend your duty to convict the prisoner, however painful the discharge of that duty may be to your feelings, will be indispensable.

EVIDENCE FOR THE CROWN.

Mr. John Stafford sworn.—Examined by
Mr. Solicitor General.

What is your situation in the police office, in Southwark?—Chief clerk of the police office, at Union-hall.

Were you, in that character, any time in November last, directed to go to the Oakley Arms?—I was.

What day of the week was it?—On Tuesday, the 16th day of November.

Where are the Oakley Arms?—Situate in Oakley-street, in the parish of St. Mary, Lambeth, in this county.

Did you go to the Oakley Arms?—I did.

About what time?—About nine in the evening.

With whom did you go?—I went with John Massey, and Richard Bethel Lloyd, two of the officers belonging to the same police office, to whom a search warrant was granted by the magistrates; I went with them, and met a large body of Bow-street officers, that sir Richard Ford had directed to attend with me; it was in consequence of his directions I recei-

ved in the morning, that I went, Charles Bacon and John Rivett were two of the Bow-street officers that attended me.

You met them before you got to the Oakley Arms?—I met them before the wall at the Asylum, the place that was appointed; we went together to the Oakley Arms.

Relate to the Court and jury what passed at the Oakley Arms?—Mr. Lloyd, the officer, attended at the room below stairs, in the Oakley Arms, with a party of officers, and John Rivett, John May, and myself, ran up one pair of stairs into the club-room, as nearly together as possible; when we went into the room there were a great number of people in the room, it turned out that there were thirty persons in the room altogether.

Did you take any memorandum of the names of the persons at the time?—I did; I took a memorandum of their names, and the short account each of them gave me of himself. Thomas Phillips was the first; he told me at the moment that his name was Jackson, he afterwards said that was wrong, that his name was Phillips; William Lander, John Lambert, Abraham Bailey.

Name all that were there who are in the indictment?—Thomas Phillips was there, William Lander, John Doyle, John Wood. I asked Wood where he lived, and what business he was; he told me he was a journeyman carpenter: I asked him whether he was a soldier; he said he had belonged to the 10th regiment of foot, but he was not a soldier then: Thomas Newman was there, James Sedgwick Wratten, Daniel Tyndall, and Edward Marcus Despard.

Is that the gentleman?—Yes, that is the gentleman; Samuel Smith, Thomas Broughton, John Emblin, and John Connell, who are witnesses, were also there, and other persons who were afterwards discharged upon entering into recognizances.

Was Charles Wichelow there?—Charles Wichelow was there.

Macnamara was not there?—No.

Nor Graham?—No.

The persons you found in the room, were in the whole to the number of thirty?—Yes.

What description of persons did they appear to be?—They appeared most of them to be working men; some were soldiers and in regimentals. I think that John Francis, Wood, and Newman had not regimentals: indeed I do not recollect that any of them had regimentals on; I am rather inclined to think they had none of them regimentals on; one had a kind of undress red jacket on.

Upon going into the room, what did you observe, and what passed?—Immediately as I got into the room, I made towards the top of the room, towards the fire-place: I looked about, and desired them not to be alarmed; that we were merely officers, come by virtue of a search-warrant, granted by the magistrates: some of them were getting up, and

seemed a little alarmed; I desired them to keep their seats. We went into the room, a good many of us, pretty quick. I desired the officers to proceed to search them; upon Thomas Phillips I saw May find a paper, which he took from him.

Should you know that paper again?—I should, because I made May write his name upon it.

Look at this paper, marked No. 1.—This is the paper, here are my initials upon it. At the time we were taking that paper from Phillips, one of the patrol came up to me and said, here is a man will not be searched. I turned about, and went to about the middle of the room, and saw the gentleman at the bar standing up; I did not know his person, Rivett was with me, Rivett directly said that is colonel Despard.

Was there any other person, besides colonel Despard, in this company who had the appearance of a gentleman?—None; some were decent looking men, but certainly had not the appearance of gentlemen. Colonel Despard desired to know by what authority we came.

You said somebody refused to be searched; who was that?—I was taken to colonel Despard, as the person who had refused to be searched. I told him we came under the authority of a search-warrant, signed by two magistrates, Mr. Carpenter Smith and Mr. Broadley; he desired to see the warrant, Mr. May had it in his possession, I desired him to produce it, and either May or myself held it out to colonel Despard, and showed him the signatures of the magistrates; he desired to read it, or asked me to read it to him, I do not know which; I told him that was unnecessary, and I declined to do it. We at that time went on to search colonel Despard, he seemed rather angry, rather indignant that we should do so. I told him it was necessary, that we were only doing our duty. We searched him very minutely, and found nothing upon him. He had in his hand at that time a green silk umbrella, with a hooked yellow stick—an umbrella that you walk with.

Were there any of the other men at this meeting besides colonel Despard who had an umbrella?—I did not see one. I saw another paper in the hand of Samuel Taunton, but I did not see exactly where it came from.

Was any other paper found?—I do not remember that I saw any more found.

Did you happen to see Broughton searched?—I was not by at that moment.

What was done in consequence of your going up into this room, finding these persons together, and finding these papers?—They were the whole of them taken into custody. I sent May with colonel Despard, one of the first, to the office, and I continued there till they were all sent away. I sent for coaches, and sent officers along with them to places of security for the night.

After they were all gone did you continue at the Oakley Arms, or go away?—I went away after they were all gone.

But before you went away, did you see any other person come to that ale-house?—Yes; I did not know the person at that time, but it turns out to be Thomas Windsor.

Where were you when he came to the Oakley Arms?—I was come down stairs, and was standing at the bottom of the stairs, seeing the prisoners put into the coaches, and taken away. I saw a man come in, dressed like a bricklayer or plasterer, there appeared some lime about him; he went into the tap-room, opposite the room where I had placed Lloyd and the other parties, he sat down, and called for a pint of beer and a pipe of tobacco.

Had you any conversation with him?—Yes; after a little time he spoke to me, and I had a pretty long conversation with him.

Did you, in consequence of that conversation, take any step, either that night or the next day?—I desired him to attend the next day at Union-hall, in consequence of the conversation I had with him. I took down his name and place of residence, and who he was at the moment.

Perhaps you can give us his place of residence?—I remember perfectly well it was in Weymouth-street, Newington; he said he was a bricklayer by business, and a soldier in the guards; I desired him to attend next morning at Union-hall before the magistrates.

Did he attend?—He did.

You did not take Windsor into custody, but took his word that he would meet you the next morning at Union-hall?—I did.

Was any thing done when he came to Union-hall?—He was examined, and upon his examination he produced another paper.

Was it similar to that you found in the room?—It was, but it seemed rather better executed; he wrote his name, Thomas Windsor, upon it, at Union-hall.

Look at this paper, marked No. 2.?—This is the paper, I marked it myself; upon seeing the prisoners, he knew colonel Despard.

Mr. Sergeant Best.—I take it for granted that what passed was reduced into writing?—The examination was taken in writing.

Mr. Solicitor General.—Was colonel Despard present?—He was; and he said he knew James Sedgwick Wratten, John Francis, John Wood; it was then Wood admitted that he was a soldier.

Mr. Gurney.—That was taken down in writing?—No, it was not.

Mr. Solicitor General.—Did he say what regiment he belonged to?—I do not exactly recollect that; John Francis, I remember, admitted he was a soldier in colonel Lambert's regiment in the guards; he had before said he was a shoemaker, but had not said he was a soldier; he also knew Emblin and Samuel Smith. The prisoners were severally committed.

Do you happen to remember the day on which parliament met?—I think it was that very day, the 16th of November.

Do you remember the day on which his majesty went to meet the parliament?—I do; it was the week following, I think it was the next Tuesday, the 23rd.

[The Paper marked No. 1. read.]

"CONSTITUTION.

"The independence of Great Britain and Ireland. An equalization of Civil, Political, and Religious Rights; an ample Provision for the families of the Heroes who shall fall in the contest.

"A liberal Reward for distinguished Merit.

"These are the objects for which we contend; and to obtain these objects we swear to be united."

"In the awful Presence of Almighty God, I, A. B. do voluntarily declare that I will endeavour to the utmost of my power to obtain the objects of this Union; namely, to recover those rights which the Supreme Being in his infinite bounty has given to all men; that neither hopes nor fears, rewards nor punishments shall ever induce me to give any Information, directly or indirectly, concerning the business, or of any member of this or any similar Society,

"So help me God."

Charles Bacon sworn.—Examined by Mr. Solicitor General.

You are, I believe, one of the patrols belonging to the Public-office, in Bow-street?—I am.

Were you present with Mr. Stafford, at the Oakley Arms, on the 16th day of November?—I was.

Did you go up into the room?—I did.

What number of persons did you find there assembled?—There were as many as thirty, or more.

Was the prisoner there?—Yes, I saw that gentleman there.

What description of persons were they? did they appear to be gentlemen, or of a different description?—There were some dirty and some clean; they were of all descriptions.

Was there any person in the room, of the dress and appearance of a gentleman excepting colonel Despard?—No; I did not see any.

Did you search any person in the room?—Yes; I searched Thomas Broughton, and found three printed papers upon him.

Was any mark made upon those papers, to identify them?—Yes; I put my name upon the back of those three papers.

Look at these three papers?—These are the three papers, marked No. 3, No. 4, and No. 5.

Colonel Despard you say was one of the persons?—He was.

Did you hear colonel Despard say any thing upon Mr. Stafford ordering the coaches to remove the persons?—Colonel Despard was walking up and down the room; he addressed himself to the company in the room and said, “*he wanted to know what he was detained for.*” Immediately a number of persons that were in the room jumped up, colonel Despard said, “*one and all follow me.*” They went towards the door; one of the officers went out of the room, and desired some of the patrol to come up; they came up, and desired them to go back into the room again.

Did they go out of the room then?—No; they only went towards the door.

When colonel Despard said “*One and all follow me,*” to whom did he address himself?—The persons in the room; there were a number of officers in the room; one of the officers went out of the room, and then a number of others came up.

Did colonel Despard say any thing else?—I did not hear him say any thing else in the room.

John May sworn.—Examined by Mr. Sergeant *Shepherd.*

I believe you are one of the police constables for this county?—Yes.

Did you go to the Oakley Arms with Mr. Stafford and some other officers, in November last?—Yes; on the 16th of November.

At what time did you go?—About nine o'clock at night. I went up stairs with Mr. Stafford; we went into the one pair of stairs room, there we found thirty persons.

Did you search any of them?—I searched one; Phillips, alias Jackson.

Did you find any paper on his person?—As he sat by the fire, he had his hand in his left hand pocket, and in his hand I found a paper, the same as that which has been read.

Did you put your name upon that paper?—I did. This is it; that is marked No. 1.

Do you know colonel Despard?—Yes; I do.

Was he one of the persons who were in the room when you went there?—He was.

Do you know any other of the persons who were there?—I did not know them before; I do now.

Did you know Phillips before?—I did not.

Name some of the persons who were there.—Phillips was one. I have the names of all that were in the room, written on the back of the warrant, under which I apprehended them.

Repeat their names?—John Wood, Thomas Broughton, John Francis, Thomas Phillips, Thomas Newman, Daniel Tyndall, John Doyle, James Sedgwick Wratten, William Lander, Samuel Smith and colonel Despard.

Samuel Taunton sworn.—Examined by Mr. Sergeant *Shepherd.*

You, I believe, are a police constable?—I am.

Did you go to the Oakley Arms in November last, with Mr. Stafford and the other officers?—I did; on the 16th in the evening.

Did you go up stairs?—I did.

How many persons did you find in the room?—I believe there were twenty-eight or twenty-nine.

Did you search any of them?—I did I searched Magree or Magrah.

Whilst you were searching Magree, did you observe any of the other officers pick up any paper from the floor?—I saw Joseph Hannah pick up a paper.

Where was the paper lying, when Hannah picked it up?—On the floor, under the table on the left, near the door. It seemed exactly under where he was sitting, before I searched him.

Did Hannah give you that paper?—He did immediately.

Did you put your name upon it?—I did.

Look at that paper marked No. 6?—This is the same.

Joseph Hannah sworn.—Examined by Mr. *Plumer.*

You are one of the constables attending the public office at Bow street?—I am.

Did you attend the other officers on the 16th of November, to the Oakley Arms?—I did.

Do you remember giving any paper there to another officer?—I did.

Where did you find that paper?—Under a stool.

Who was standing near that place?—There was a man standing there, who, I understand, has since been discharged.

Do you know his name?—I do not; I took the paper up, looked at it, and gave it to Taunton.

John Rivett sworn.—Examined by Mr. *Plumer.*

You are one of the constables belonging to the public-office in Bow-street?—I am.

Were you at the Oakley Arms on the 16th of November?—I was.

Did you go up stairs into the room where the prisoners were apprehended?—I did.

Did you see the prisoner, colonel Despard, there?—I did not see him at first going into the room; I saw him in two or three minutes after.

Did you know him before?—I did.

Thomas Windsor sworn.—Examined by Mr. *Garrow.*

You are a private soldier, in the grenadier company of the third battalion of foot guards?—I am.

Do you know the prisoner at the bar, colonel Despard?—Yes.

Do you know a person indicted of the name of John Francis?—Yes.

Were you with lord Egremont in the month of March last, at Chatham?—Yes.

Did you at any time, soon after the return of the regiment from Chatham, receive any printed papers from John Francis?—Yes.

Did you deliver any of those cards or papers to any person, and to whom?—Yes; I delivered one to Mr. Bownas.

Of the Transport office?—Of the Transport office, or the Agent-office.

Is he an army agent?—He is.

Did you communicate to Mr. Bownas under what circumstances you had received those papers?—Yes.

Did you leave one or two of those in his possession?—I left one.

Did you receive from Mr. Bownas any advice, as to the conduct you should hold, respecting the person from whom you received those papers, and the subject matter of them?—Yes.

What did Francis state to you to be his object in delivering that paper to you, and what did he invite you to assist him in doing?—To unite ourselves to overturn the present tyrannical system of government.

What were you to do for this purpose?—To unite ourselves in different companies to get possession of arms.

Did Francis, to your knowledge, apply to any other soldiers besides yourself, to assist in this plan?—Yes; to Thomas Blades.

In consequence of this, was he afterwards at a meeting held at any public-house in St. Giles's?—Yes.

Upon the delivery of the cards to you, did Francis make any proposal to you, to bind you to this association?—He offered me a printed card, which was an affidavit.

What did you do with it?—He told me to read it, and to kiss it.

Did he give you more than one at that time? Not at that moment.

Had he before given you any?—No.

Was the first act, respecting the card, the giving you some of those cards, or swearing you in?—The first act was the swearing me in.

Describe how you were sworn in?—He told me to read the oath; I read it.

Did you read it aloud?—No secretly to myself, and in a low tone of voice, and then he desired me to kiss it.

Do you now know whether that is the usual mode adopted of swearing in soldiers to this conspiracy?—It is.

What is the mode when the soldier is not himself capable of reading?—Then the person who brings the man forward, reads it for him if he can, or some other person belonging to the society reads it.

When it is read to him, what does the person do?—Then he kisses it, for that is the form of the oath.

How soon after you had been sworn in, did Francis give you the other cards, one of which you delivered to Mr. Bownas?—It was about a week afterwards.

For what purpose did he deliver them to you, and with what directions for your con-

duct?—That I might distribute them to whom I thought proper, as a person capable to take the command of a company.

How many did he deliver to you the week after you had been sworn in?—Two of them.

Did he deliver you the one upon which you had been sworn in?—I believe he did.

Soon after this was there any meeting held at a public-house in St. Giles's?—Yes; at the Brown Bear.

Is there any other house in St. Giles's where this meeting used to be held?—Yes; the Running-horse.

How many persons used to meet at a time at these public houses?—Generally from sixteen to twenty, or to twenty-five.

What description of persons were they generally who met there?—They principally appeared to me to be Irishmen of the lower class; labouring men.

Were these meetings had frequently?—Yes; every week.

Was there at any time any determination or resolution come to, about the mode of holding these meetings?—There was a resolution come to by a man of the name of Mack, as we called him, but his proper name is Macnamara. He proposed at a meeting, at the Running Horse, that we should change the public-houses of meeting as often as possible in order to avoid detection.

Was that advice adopted, and were other houses resorted to?—Yes.

Amongst others was there a house in Hatton-garden?—Yes; the Bleeding Heart, in Charles street, Hatton-garden.

Did you attend any meeting at the Bleeding Heart?—Yes.

Was John Francis at this meeting?—He was.

Who accompanied you to any of those meetings?—Thomas Broughton accompanied me to one of the meetings at the Bleeding Heart.

What number of persons might attend at that meeting?—About twenty-five.

What was the object of these meetings, and the business to be transacted at them?—To unite ourselves, to raise subscriptions to pay delegates to go into the country, and to pay the expense of the printing of these affidavits, to overturn the system of government, and to destroy the royal family.

Were these purposes named in the meetings of the persons who assembled, as the objects of their union?—In general they were.

In what manner were new members added to the association?—There were ten men in each company, and when they amounted to eleven, the eleventh took the command, if he raised the number himself.

What was his denomination?—Captain; as captain of ten.

Were they all sworn in?—They should be, according to the directions and orders.

Is the society divided into any divisions, and what?—In different divisions, but they were not bound to a number.

What were the divisions regulated by?—By place.

What was the division with which you were associated?—A division in the Borough; there was a division in Mary-le-bone, a division in Spital Fields, and a division from Blackwall and upwards, towards the city.

You have given us the constitution of the companies of ten and their captains; what was the next order?—The oldest captain of fifty, was to have the command of fifty.

What was he called?—He was called colonel of that deputy division; that subdivision.

Were you a private in the ranks in this association?—John Francis and Macnamara, told me they should appoint me as colonel of the Borough division.

What character did they hold in the Union which entitled them to appoint you a colonel?—They called themselves colonels, under the head colonel or commander in chief.

Do you know the Spread Eagle in Mill-lane?—I never was there.

Do you know whether that is a place for the meeting of any subdivisions?—It is.

Do you know a person of the name of James Sedgwick Wratten, who is indicted?—Yes.

Do you know of what that division in Mill-lane is principally composed?—Principally of persons who have been discharged from the navy, or who have been in the great gun exercise.

Do you know whether Wratten is himself an officer?—He called himself a colonel.

Do you know the Hoop and Ram, in the Mint, in the Borough?—Yes, that is the house Wratten associates at; he holds his division there; it is the house where he assembles his people.

Do you know a house called the Oakley Arms at Lambeth?—Yes.

Did you ever attend at the Oakley Arms, and upon whose summons?—Yes, upon Broughton's summons.

What evening of the week was it?—On a Tuesday.

When was the first time you met there?—It was about six, or seven, or eight weeks before I gave in my evidence.

Whom did you meet there, besides Broughton who summoned you?—There was a man there of the name of Arthur Graham, and another man of the name of William Lander; there were to the amount of about half a dozen, but I did not know any of the others.

What was done at the first meeting at the Oakley Arms?—There was nothing done there; Broughton went to a man of the name of Hutchison, in Cecil-court. On Tuesday, the lord mayor's day, we were at the Oakley Arms.

Were Broughton and any of the persons you have mentioned there?—I went to that

house, and the son of the man who keeps the house went up stairs and called Broughton out to me. There were a vast many people, the room was almost full; I went just within the door to speak to Broughton, but did not stay there.

What number do you think were there?—About thirty.

Did you go there accidentally, or by appointment?—I had been up at a meeting at the Windmill, in Windmill-street, and upon my return, looked in at this place.

Were you present at any time when a subscription was entered into by any person?—Broughton told me on the 9th they had gathered fifteen shillings and sixpence, and that it was to pay for delegates going into the country, and to pay for some more of those affidavits being printed.

Did Broughton, at that, or at any time, produce any of these oaths to you?—I had one from him there; I gave him a shilling for it.

You said you came from a meeting in Windmill-street?—Yes.

What number of persons were there?—About sixteen.

What had been transacted there?—The same as at the other meetings; principally encouraging people to get as many recruits as they could; asking if there were any members that would take a card, and bring men.

Were cards produced for that purpose, in order to furnish those who were disposed to take them?—There were; John Macnamara was at that meeting.

What was proposed to be done with the papers, when they should be printed?—To distribute them into the country by the delegates, who were appointed for that purpose.

Did you offer to contribute towards a subscription at any time?—That was part of the subscription I paid, when I paid a shilling for the affidavit.

Was any observation made upon that by any person?—Broughton said each member who took one of these affidavits, must pay a shilling for it, and the money, over and above what was paid for printing any more, was to be paid to the delegates.

Do you remember a meeting on the Tuesday following, at the Hoop and Ram in the Mint?—No; it was a fortnight or more before the meeting on the lord mayor's day.

Who were the persons that were there at that time?—Broughton was present.

Was the same object pursued at all these meetings?—The same; there was no difference, one from another.

Who were present at this time?—Broughton was present, Wratten was in the chair, John Wood, a soldier of the first regiment, was there, Magrah was there, Newman, of the first regiment, was present, and Thomas Blades, and several other persons.

Do you remember a meeting at the Bleed-

ing in Heart, Charles-street, Hatton Garden?
—Yes.

When was that, as near as you can fix it?
—It might be about six weeks before the meeting at the Hoop and Ram, in the Borough.

On what day of the week was it?—On Sunday evening.

Do you know a house called the Bell, in Tower-street?—Yes.

Did you attend any meeting at that house?
—I was ordered to attend, but it being in the time of evening service, the landlord would not let them in; they went to the Canteen, a sitting house in the Tower; they call it the Stone-kitchen.

What time was that?—On a Sunday; about a fortnight after the meeting at the Bleeding Heart.

How long was that before lord mayor's day?
—About three weeks or a month before.

How many persons were at that meeting in the Stone-kitchen?—When they first assembled, there might be about twenty or twenty-five; when they found they could not get into the house, they rather dispersed; and I think about thirteen or fourteen of them went to the Tower.

When you were assembled there, what business was discussed?—They were planning that some part of them should go to Woolwich, to the Warren, to try if they could not get some people belonging to the Warren, to unite with them.

You have already stated a meeting at the Oakley Arms, on lord mayor's day. I pass to the next meeting. Do you remember a meeting on the 13th of November, the Friday after lord mayor's day?—I do.

Where were you when applied to, to attend that meeting?—I was at work, at No. 16, in West-street, West-square, setting up a copper; Broughton called upon me there, and said, "Windsor, come with me to the Flying Horse, in Newington, I will introduce you into good company."

Had you been at the Flying Horse before?
—Not that evening; it was a house I used; I had my regular beer from the Flying Horse. I told him I could not neglect my business, that I had a wife and family to maintain. He said, "Damn it, you must neglect your business; I neglect mine."

Did you, in consequence of that, go with Broughton to the Flying Horse?—I went with him to the Flying Horse.

What part of the house did you go into at first?—I went into the tap-room; I made a stand there; Broughton said, "Don't stop there, come along;" then I followed him into the parlour.

Did you find any person in the parlour?—I found a gentleman who called himself colonel Despard; that gentleman there is the person.

Were you before acquainted with colonel Despard?—I was not.

Then you found a gentleman, who was a stranger to you, sitting in the parlour?—I did; when I went in, Broughton addressed himself to me, and said, "that is colonel Despard."

Had you had conversation with him before about colonel Despard? Did you know whom he meant, when he said he should introduce you into good company?—I did not; I made my obeisance to the colonel, and took my seat.

Was any body else in the room?—Yes; a gentleman of the name of Emblin, Samuel Smith, and Arthur Graham.

What was said?—Broughton told Graham, "that was colonel Despard," and Graham and colonel Despard fell into conversation.

Did any thing farther pass?—Nothing; Graham and colonel Despard fell into conversation for some minutes; then Mr. Emblin entered into conversation with colonel Despard.

Did you hear what passed between him and Graham?—I did not; I was not privy to that conversation. I saw Graham offer a piece of money to colonel Despard, which he refused; Graham then said, "You shall have something to drink;" and he ordered a shilling's-worth of brandy and water.

Did any thing pass, from whence you collected what that piece of money was offered for?—It accompanied the conversation; Broughton said, "that is colonel Despard;" then he offered colonel Despard a piece of money; he ordered a shilling's-worth of brandy and water.

What did you hear pass in that conversation?—I heard Mr. Emblin urgently recommend to colonel Despard, "that there ought to be a regular organization in London;" colonel Despard said "No; a regular organization in London is dangerous to us, it is under the eye of government; but a regular organization in the country is necessary, and, I believe, is already general; and that the people were every where ripe and anxious for the moment of attack."

Was this addressed still to Emblin?—Yes; and colonel Despard said, "and I believe this to be the moment; the people, particularly in Leeds, in Sheffield, in Birmingham, and in every capital town in England, are ripe;" and he said, "I have walked twenty miles to-day, and the people are every where ripe where I have been." He said, "the attack is to be made on the day his majesty goes to the House, and his majesty must be put to death." He said, "that the mail coaches were to be stopped, as a signal to the people in the country, that they had revolted in town." That was principally what colonel Despard said at that moment.

Did he address any thing to you?—Not at the moment I went in. Colonel Despard said, "How do you do?" and he said, after the conversation I have stated, "Windsor, Wood has mentioned you to me."

Had your name been mentioned in that

meeting in his presence, before he said, "Windsor, Wood has mentioned you to me?"—Yes; Broughton frequently called over to me by the name of Windsor.

What more did he say to you?—Colonel Despard said, "I would be glad if you would meet me on Tower-hill on Monday morning, at half past eleven o'clock, and bring with you four or five intelligent men, to consult on the best mode of taking the Tower, and securing the arms."

Did you promise to meet him?—I promised to meet him there.

In the course of that meeting do you remember any other remarkable expression to have been used by colonel Despard, with respect to any consideration he had given the subject?—Yes; he said, "I have weighed the matter well, and my heart is callous."

Lord *Ellenborough*.—What immediately preceded that?—I believe it was at the time when he said, the people are every where ripe; he said, "the people are every where ripe, but I have weighed the matter well, and my heart is callous."

Lord *Ellenborough*.—Had he, before that, mentioned that an attack was to be made on his majesty, and his majesty was to be put to death, before he said, his heart was callous?—He had mentioned that.

Mr. *Garrow*.—You promised to meet colonel Despard on the Monday following, when he had asked you to bring four or five intelligent men with you?—Yes.

Did you say you would bring four or five intelligent men with you?—I said I would.

Do you happen to recollect who paid for the brandy and water?—Graham paid for it.

Did you see the servant girl that night?—The servant girl came into the room several times that night.

Did any body give her any thing?—Mr. Emblin gave her two or threepence, and he said, "I will kiss you when I come again," or, "I'll have a kiss when I come again."

How long do you think you were in company with colonel Despard, at the Flying-horse?—About two hours and a half.

Do you remember any observation of Emblin's to colonel Despard, with respect to the advice he had given as to the organization?—No more than saying, he thought a regular organization would be necessary.

Upon the Monday did you meet colonel Despard any where?—Yes; at the Tyger at Tower-hill.

Did you take any person with you?—Yes; a man of the name of Winterbottom, a soldier of the same company.

You went there, agreeably to the appointment that had been made on the Friday before?—Yes.

Did you find colonel Despard there, or did he come after you got there?—I was there at the time appointed, which was half past eleven; colonel Despard came about five minutes before twelve.

Did he come alone?—Yes.

What part of the house were you in?—When colonel Despard came, Winterbottom and I were in the tap-room; colonel Despard made a motion with his head, beckoning me out; I went out, and left Winterbottom behind.

What did colonel Despard say to you on your going out?—He said, "Windsor, are these people belonging to us?"

What people were there there?—There were four or five more soldiers in the tap-room, when colonel Despard said, "Are these people belonging to us?" I said, "Yes;" says he, "tell them to come along with me." I said, "Sir, there is only one I can depend upon, and that is Winterbottom." Then he said, "You take one direction and I will take another, as you are well known and are in your regimentals, and meet me opposite White-chapel church."

I understand that you, Winterbottom, and the other soldiers had your regimentals on?—Yes, we had.

Did you return to Winterbottom, and go with him according to the appointment made with you?—I did.

When you arrived opposite Whitechapel church with Winterbottom, did you find the colonel there?—The colonel walked gently before us; we overtook him when we got opposite the church.

Not noticing him till you got there?—No; when we came to the Two Bells, the colonel said, "Go into that public-house (pointing to the Two Bells) and I will go and find a man who can give me some information respecting Lynch."

Who was Lynch?—A soldier, who had been in the third battalion of the first regiment, but was then discharged.

Did you go into the public-house as he directed you?—Yes; he asked me, "if I had got any money;" I said I had as much as would buy a draught of porter; Winterbottom and I went into the public-house.

How long did you stay before colonel Despard came to you?—We waited about half an hour; he brought with him a man of the name of Herron.

What was Herron?—He had been a soldier formerly in the first regiment of guards, but was then discharged.

He, of course, was not in regimentals?—No; he was in coloured clothes.

What did the colonel say when he came?—He said, "he could not find any thing of Lynch; he believed Herron had seen Lynch the week before, and he believed him to be still in the regiment." I was desired by the colonel to inquire after that man at the Flying Horse, on the Friday evening, and the colonel said "I might trust him with any secret I had."

Did he describe him to you?—Yes; Lynch of the third battalion; he came and beckoned me out of the Two Bells, as he had done at

the former public-house; he made a signal with his head to me; this conversation, I have stated, took place, upon his beckoning me out; we walked up and down the street for the space of about twenty minutes; I believe they call it Brick-lane; Winterbottom, Herron, colonel Despard, and me.

Then they went out, upon his making the signal, as well as you?—No; Herron did not go into the house; while we were walking there the colonel said, "Windsor, we are deceived in the number of arms that are in the Bank; there are no more than six hundred, and they have taken the hammers off, to render them useless, as they must have been apprised of our intention." We went to a public-house in Whitechapel after that conversation, the sign of the Coach and Horses.

Who went?—Colonel Despard, Winterbottom, Herron, and myself: we had two pots of porter and some bread and cheese, we had a twopenny-loaf, and a quarter of a pound of Gloucester cheese.

How did you get your bread and cheese?—The boy fetched it: the colonel gave the boy the money to fetch it.

It was not supplied by the public-house, but fetched from some other house?—I believe it was the boy brought it in; the colonel said to me, "Windsor, do you know those two soldiers at the top of the table? They were at the top of the tap-room table, in the same box we were sitting in. I said I knew them by sight, but did not know what their names were. He said, "I believe they belong to us;" meaning, belonging to the society the same as myself.

Did he say any thing to the soldiers?—No, he did not; Herron was in conversation with him, but I did not hear what colonel Despard said; he said, "Windsor, his majesty must be put to death, and the people will be at liberty." He asked these soldiers to have something to eat and drink, but they declined it.

Did he speak this about his majesty loud enough for those soldiers to hear it?—He did not; he spoke that to me privately. He said, "He would make the attack himself on the day his majesty went to the House, if he could get no assistance from this side of the water."

You were at this time on the Middlesex side of the water?—Yes.

By whom did he say he would make the attack?—By the forces he had on that side of the water.

Contradistinguishing it from the Borough division from this side of the water?—Yes.

At what time did you understand that his majesty was to go to the House?—On the 23rd of November.

Do you know on what day of that week his majesty was to meet parliament?—I understood it was to be on the Tuesday.

Was there any thing more in that conversa-

tion that is material?—Nothing more. The colonel asked me "to meet him on the next night, with seven, eight or nine, intelligent men, to consult on the best method of attacking the Tower, and taking the arms."

Where were you to meet?—At the Oakley Arms, in Oakley-street, Lambeth.

Did you promise colonel Despard, that you would meet him there?—I told him, if he came forwards himself, and showed himself in the different meetings, the people would be satisfied that there was such a person as himself to lead them.

Did this finish the conversation at that meeting?—It did.

Who paid for the refreshment your company had had there?—Colonel Despard, and then we parted.

At what time did you part with the colonel?—About a quarter before two.

Did you, in the course of that same day, see Wratten and Wood?—Yes.

Did Wood say any thing to you respecting any part he was to take in the accomplishment of this plan?—Yes; "he said he would post himself sentry over the great gun in the Park, and load it, and fire it at his majesty's carriage, as it passed, in going to the House."

Wood is a soldier, I think, you told us?—He is.

Is he, in the course of his duty, sometimes centinel at that gun?—He might be so.

Did you go to the Oakley Arms upon the 16th of November?—Yes I did.

For what purpose did you go?—To meet colonel Despard, according to his appointment and order.

At what time did you arrive there?—I believe it might be at about half past nine o'clock, or a quarter before ten.

Did you find that the police officers had been there?—Yes; and I found they were in custody when I came there.

Had any of them been sent away then?—I saw some of them taken away; I saw Broughton go away, then I went into the tap-room; I had a pint of porter, I did not like it; then I called for some gin and water.

Whilst you were there, did you see a gentleman you have since known to be Mr. Stafford?—I did.

Did you enter into any conversation with him?—I did.

Did he introduce the conversation?—No; I introduced the conversation with him, and told him who I was.

Did you give him your address?—I did.

Did you communicate to him, that you were acquainted with circumstances which related to that night's business?—Yes.

Did he, in consequence of that, appoint you to meet him at Union-hall, the next day, before the magistrates?—I told him I would be there any day he chose to appoint.

He made the appointment for you to be there?—Yes.

And then you were at liberty; nobody obstructed you?—Yes; I went about my business.

Did you keep your appointment the next day?—I did; he told me to be there a quarter before eleven o'clock.

You have spoken of a person you have called Emblin, whom you saw at the Flying-horse. Did you know him before you met him in the parlour there with colonel Despard?—I never saw him till that time; I am not certain whether he was in the room when I first went in, or came in afterwards.

You can read, cannot you?—Yes.

Was it a card similar to this, which you delivered to Mr. Bownas?—It was.

You spoke of affidavits being printed for the delegates; look at this paper; were the papers similar to this?—They were.

Thomas Windsor cross-examined by Mr. Sergeant Best.

How long have you been a soldier?—I believe about eleven years.

What age are you now?—Twenty-five, the twenty-fourth of last October.

You know Blades?—Yes.

You belonged to this conspiracy from the month of March?—No.

I understood you to say so?—No.

When did you belong to it first?—About six weeks after I came up from Chatham.

What time of the year was that?—The latter end of May or June, I believe.

Did Blades belong to the conspiracy?—He did.

Who swore Blades in?—John Francis.

You mean to swear, that John Francis swore Blades in?—Yes.

Do you recollect inviting any persons to go to the Oakley Arms, on the 16th?—Yes.

Who were those persons?—I took a man with me of the name of James Mayhem.

Did he belong to the conspiracy before?—Not to my knowledge; he said he had been United in Ireland.

Did you take any other persons there that night?—I did not.

Did you invite any other to go there that night?—I might, but I do not recollect it; I might, but I cannot be positive.

Did you desire any persons to attend that night, who had not attended any of the meetings before?—No; I had no acquaintance with any persons who had not attended the meetings before, that I asked to go there that night.

Did you ask any of your fellow workmen to go there that night?—Mayhem was the only one I asked; he was my labourer that day.

Will you swear you did not invite any other persons to go there that night, who had never attended any meetings before?—I will not swear that I did not; I used to invite people that had not been there before to go.

For what purpose?—To make them believe that they were my own party, for my own safeguard.

Thomas Windsor re-examined by Mr. Garrow.

Who was it you wished to persuade that they were part of it?—There was one of the name of Mayhem, an Irish labourer; there was another of the name of Marney, an Irish labourer.

Had those persons told you they were United Irishmen?—They had.

You said one reason was for your own safety?—These people told me they had been United in Ireland; that was the reason why I took them there, as I was ordered to bring those people there; Mr. Bownas told me to keep an eye upon these people, and put myself as forward as possible.

Lord *Ellenborough*.—Mr. Bownas recommended to you to pursue measures of this sort?—Yes.

Mr. *William Bownas* sworn.—Examined by Mr. *Common Sergeant*.

You live in Derby-street, I believe?—I do.

You are an army agent, I believe?—I am.

Look at that card (No. 7) whom did you receive it from?—I believe I received it from Thomas Windsor, but I cannot positively swear I did.

Have you more of them which makes you doubt?—I never had but that one, but whether he left it in my office or not, I cannot say.

Who is Windsor?—A soldier in the guards.

Had you any conversation with him respecting the purport of that card?—Yes, I had, undoubtedly.

Did you give him any directions or advice as to his conduct?—I certainly gave him advice as to his conduct, when he mentioned that such a meeting as this existed. The advice I gave him was—

Mr. *Gurney*.—We do not want your advice.

Mr. *Common Sergeant*.—Did you give him advice as to his conduct respecting that card?—I did.

At what time was it?—About July last.

Look at that card; have you any doubt about it?—I can have no doubt; it is the card that was left for me, for that I received from him; I have no doubt it is the same.

And upon which card you gave him advice and directions how to act?—I did.

William Campbell sworn.—Examined by Mr. *Wood*.

Are you a soldier in the guards?—Yes; I was stationed in the Tower.

Do you know the Coach and Horses, in White-chapel?—Yes.

Were you there on the 15th of November last?—Yes.

Was any body with you?—Yes; Charles Dean, another soldier, who is quartered in the house, was with me.

At what time were you there?—About two o'clock.

Where did you sit?—In the box in the front of the fire in the tap-room.

Do you remember any persons coming into the tap-room?—Yes.

How many came in?—Four.

How were they dressed?—There were two soldiers that had got their soldiers coats on, and there were two other men in coloured clothes.

Was one better dressed than the other?—Yes; one was better dressed than the other, and had an umbrella in his hand.

Who were the two soldiers?—Windsor and Winterbottom.

Should you know that gentleman again?—Yes; I should know the one again that had the umbrella in his hand; that is the gentleman [pointing to the prisoner].

Did the prisoner say any thing?—He and Windsor were discoursing together.

Could you hear what their discourse was?—I did not hear what they were saying.

Were they in the same box with you?—Yes.

Was any thing said about bread and cheese?—Yes; they asked the landlord if they could have any bread and cheese.

Which of these asked the landlord?—I do not recollect; the landlord told them he did not keep any, but they could have some below, at the shop.

Was there any bread and cheese sent for and brought?—Yes.

Did the prisoner say any thing to you?—We were asked, I do not know by which of them, if we would have any bread and cheese; we told them we had just dined, and would not have any.

You did not know the fourth man, did you?—No.

Did you hear him say any thing?—No; he asked us after several men belonging to the regiment that we did not know, and could not give him any account of them; that man was in coloured clothes; he said he had been once in the regiment, but that he was discharged.

Did he say how long he had been discharged?—I do not recollect.

How long did they stay?—Half an hour or better.

Did you see them go away?—Yes.

Did they go together?—They went out of the house together; the two soldiers went up Whitechapel, towards the Tower, the other two gentlemen went down Whitechapel.

Charles Dean sworn.—Examined by Mr. Fielding.

Were you, on the 15th of November, on the Tower duty?—No.

Do you remember being at a public-house, on Monday the 15th of November, in company with William Campbell?—Yes.

What was the public-house where you were in company with him?—The Coach and Horses, Whitechapel.

Was it between the hours of twelve and two think you?

Mr. Sergeant Best.—We beg you will not put the hour into his mouth.

Witness.—It was about half past one.

Campbell and you were sitting together in a box?—Yes.

Do you know Windsor?—Yes.

Do you know Winterbottom?—Yes.

Did you see them come into the public-house while you were sitting there?—Yes.

Any body else with them?—Yes.

Was that gentleman (the prisoner) one of the persons accompanying them?—Yes, and there were two besides.

The soldiers were in regimentals, were they not?—Yes.

How was the prisoner dressed?—In a blue coat, and he had an umbrella with him.

Did the prisoner say any thing to you or your companion, Campbell?—No farther than when they came in, they asked the master for some bread and cheese; he said he did not sell any, but they might get it below; the prisoner gave the boy some money to fetch some bread and cheese; when the bread and cheese came, they asked us if we would have any.

Who asked you?—The prisoner: we told him we had just dined: they called for some beer—they had two pots; they asked us if we would drink, we drank once a piece with them; then the prisoner paid for it; and they got up and went out, the two soldiers went towards the Tower, and the prisoner and the other gentleman went down Whitechapel.

Joseph Walker sworn.—Examined by Mr. Abbott.

Where do you live?—I keep the Coach and Horses, Whitechapel.

Were Campbell and Dean quartered at your house last November?—Dean was, but not Campbell.

Do you remember their being there together?—I remember Dean and a person being with him, a soldier; I should not know that man: they both came off from duty at the Tower.

At the time they were there, did any other persons come?—Before they came in, there were two men of the appearance of gentlemen came in; I was down in the cellar at work, when I came up from the cellar, I saw two persons decently dressed sitting at one end, and they had a pot of porter; they asked me when I came out of the cellar, if I could let them have any bread and cheese, I told them I did not sell any, they might get it a few doors up the street.

Were there any other soldiers in company with these two persons that you say were decently dressed?—Windsor was with them; Windsor was one of the men that sat at the end of the table.

Who was the other that sat at the end of the table?—I do not know who he was; he was genteelly dressed, in a blue coat, and had an umbrella.

Were they the only two persons in that room?—They were the only two men in that box: while they were drinking the pot of porter Dean and the other soldier came from the Tower from duty.

Was Windsor one of the men who you said were genteelly dressed?—Yes.

Do you know who was the other?—I should not know him if I saw him; he was genteelly dressed, and had an umbrella with a hook stick.

Thomas Blades sworn.—Examined by Mr. Sergeant Shepherd.

I believe you are a private soldier in the first regiment of foot guards?—Yes.

Do you know a man of the name of John Francis?—I do, he is a soldier.

Do you remember having any conversation with Francis at any time, in the presence of a person of the name of Thomas Windsor?—I do.

When was the first conversation you had with him?—About the beginning of June: he informed me "there were a great number of independent gentlemen had united themselves together, to form and establish a free and independent constitution, for" (he said) "the present constitution was much broken."

Had you conversation with him at any other time?—He desired me to join him—"To take an oath to join into their society."

Repeat what he said about the constitution being broken?—He said, "That the old constitution was much broken, and that the gentlemen who had united themselves together were determined to risk their lives and fortunes in establishing a free and independent constitution."

Was any oath produced to you at that conversation?—Not at that conversation.

How long afterwards was it before you had any conversation with John Francis upon the subject?—The next Sunday.

Was Windsor present at any of that conversation?—He was along with me at some part of it, but at the time that I took the oath I turned away.

Was any paper or card produced to you at that conversation?—There was a card produced to me by John Francis; I read it.

Can you recollect what was the purport of the card?—I cannot rehearse the whole of it; there was the constitution of the united kingdoms of Great Britain and Ireland, and that the society was determined to get those rights which God had ordained for them. But I hope you will excuse me, for I cannot go through what was wrote upon the card, not the whole of it. There was something at the bottom of it, that you took the oath which you swore in the presence of Almighty God, to endeavour to get those rights which you took the oath to maintain.

Do you think you should know the contents of the card, if it were read to you?—Yes, I should.

Upon your reading this card, were you desired by John Francis to do any thing?—He desired me to go along with him to the Ham and Windmill.

What did you do when you read the card?—I kissed the card.

Who told you to kiss the card?—John Francis.

Why did you kiss the card? was that the manner in which you were to be sworn?—It was.

In consequence of kissing this card where did you go with it?—After we had settled our business on the parade, we went up to the Ham and Windmill.

Lord Ellenborough.—Did this pass upon the parade?—Yes, I was sworn upon the parade.

Mr. Sergeant Shepherd.—Where is the Ham and Windmill?—In Windmill-street, the top of the Haymarket.

Did any body go with you besides John Francis?—Yes, Thomas Windsor.

How long did you stay at the Ham and Windmill?—I do not suppose we were there above twenty minutes, hardly that.

At any time afterwards were you with John Francis at the Ham and Windmill?—I was there about the latter end of June, when I was fetched by his brother William, the same evening the balloon went off from Lord's cricket ground.

Who was present at the Ham and Windmill, when you went with John Francis at the time you have mentioned?—William Francis and I went up there, and waited a considerable time. This was the second time of being at the Ham and Windmill.

Did you see John Francis there at that time?—I did; he came there after William Francis and I were there, about the latter end of June.

Did any body come with John Francis?—There was a man that passed for a breeches-maker; I was told by William Francis that his name was Connelly; and Macnamara came in soon afterwards; there were some old people there, but their names I do not know.

Did those persons, whose names you did not know, form part of the same company?—They did.

Did you hear any of those persons say any thing to the company?—Yes, Macnamara addressed the company, he said—"He came from the executive power, and he addressed the society, and exhorted them to stick together, and to the best of their endeavour to arm themselves, so as that they might be able to make head against government."

Do you recollect any thing else?—Yes, he said, "that he had full power from the executive government to appoint the colonel to command the first regiment of national guards."

Was any body pointed out as a fit person for this?—Yes, he appointed John Francis.

Were any other persons mentioned?—Yes, he appointed John Francis, and authorised him to appoint three more, and likewise an officer of artillery. Macnamara said, "he was to appoint them without partiality."

What did John Francis say upon that?—He appointed me as one, and the two other men, whose names I do not know; but this man, that went by the name of Connelly, and that passed for the breeches maker, was appointed another, and a little man was appointed another.

In consequence of that, do you remember the little man going out of the room and coming back again?—Besides that, he appointed a man, whose name I cannot recollect, to be a captain of artillery, because he had been used to gunnery; he appointed three colonels, and he appointed that person. He swore in one on the Sunday, when Windsor and I were present, to be a captain of artillery.

Do you remember the little man going out of the room, and coming back again?—I do; he and John Francis went out together.

What passed when the little man came back again?—The little man and John Francis returned back again, and John Francis had a paper in his hand, and there was wrote upon the top of it, "The first regiment of national guards," and an appointment of colonels to command the regiment.

Was any proposal upon that made by any body?—There was one of the men, which was the breeches-maker, said something concerning commissions being issued out, but Macnamara said, "That issuing out commissions would be signing their death-warrants; that the officers should receive their commissions the night before the attack should be made."

Do you remember afterwards being at any public house with John Francis and Macnamara?—The next time I saw John Francis was the 6th of September, in the Tower.

Where were you at that time?—On the main guard at the Tower.

When did you see him next after that?—The next time after that was the Sunday following, which would be the 13th; he came down to me at the Tower.

When after that did you meet him again?—On the Monday following, at the Bleeding Heart, in Charles-street, Hatton-garden.

Who were there besides John Francis?—There were John Francis, Wood, Tyndall, Wratten, Penderill, Macnamara, and Winterbottom, I believe. I cannot recollect any other names positively, but there were several other persons there.

To about what number?—About a dozen, I suppose, or fourteen.

What was the subject of conversation?—Wratten spoke up, and he spoke to Penderill, and said, "he had come from the Borough

along with Tyndall, to know the determination of the Executive, with regard to when the attack should take place." Mr. Penderill, in answer to that, said, "That the attack would have taken place before, if it had not been for two or three cowards, Roach in particular, not bringing up their men; but he said it should lose nothing on his part, he could bring a thousand men into the field at any time;" he said, "that in case he saw any man show the least symptom of cowardice, he would blow his brains out." John Francis in answer to that said, "He thought it would be better to make the attack as soon as possible, at least before the den of thieves met," which was the term he made use of for parliament; he said, "if in case they discovered any of our proceedings, or were any way up to them, that they would enact such laws as that we should never be able to meet together, or to correspond with each other." In answer to that, Penderill said, "There was not the least danger of it ever being found out, for he had belonged to it a considerable time, and many persons had been taken up at different times, but had never divulged the secret; and if in case any man should divulge the secret, he should have a dagger in his breast directly."

Do you remember any other person saying any thing in consequence of this?—Wood said, "In case he should not be there at the grand attack, he had a select party of his own, where he should be, and it would be of as much importance as where the grand attack should take place."

Was any thing proposed or agreed upon, in consequence of what had been said?—Ammunition was ordered to be provided for the people.

By whom was the ammunition to be provided?—By the Executive.

Who was the person who used the term of Executive?—Both Macnamara and Penderill; but it appeared to me as though Penderill were one of the Executive.

Do you remember meeting John Francis at any time afterwards?—On a Sunday after that I was coming along the High-street, in the Borough, I met with John Francis; he asked me if I would go with him down Tooley-street, to the Black Raven; I went with him; there were Wratten, Tyndall, Wood, and Macnamara there, and about six or seven Irishmen, in a state of intoxication.

How many persons were there at the Black Raven?—About twelve or thirteen.

Had you any conversation on the same sort of subject?—Similar to the rest; the conversation we had there was concerning a form of government.

Do you recollect being at the Oakley Arms at any time after that?—Yes; on Tuesday the 9th of November.

How do you know it was the 9th of November?—I was going from East Smithfield, where I worked, up to Knightbridge Bar-

racks, to receive my pay: going through Cannon-row, I met with Broughton; he told me, there was a meeting to be at the Oakley Arms that night; prior to the attack being made on the 16th; he said, "that the heads of the people would be there to settle it, and he desired me to call upon him at the Oakley Arms."

Did you go to the Oakley Arms in consequence of that?—Yes, I did.

Into what room did you go when you went there?—I went first into the tap-room, and called for a pint of beer and a pipe of tobacco; then I went into the bar and asked the landlord if he knew one Broughton; he called his boy directly, and told him to go up stairs and tell Tom, that there was one wanted him; in consequence of that, Thomas Broughton came down to me in the tap-room; he took my pint of beer and ran up stairs; as he went up stairs he said, "the colonel is here."

Did you go up stairs with him?—I did; I went into the room; as soon as I got into the room, a gentleman presented me with a shilling's worth of rum and water to drink round.

Do you now know who that gentleman was?—I do; it was colonel Despard: the way I came to be acquainted with him that evening was, Wood came and whispered into the gentleman's ear that gave me the liquor, and says, "the gentlemen that are come upon business this night, ought to retire into one end of the room, and those that are only come to show their good will, may remain at the other."

Do you recollect the words he used?—He said, "when there were a number of people upon such business as that, there were wrangles often arising, and that those that were come upon business, or to settle the business,"

Which was the phrase he used?—To settle business. It was agreed on afterwards, that those who came to settle business, should have the preference of the fire; and those that came to show their good will, were to go to the other end of the room, where there was no fire.

Did you hear these persons called by any particular name who came to settle business?—I heard no particular name, any farther than *Representatives from different divisions*.

In consequence of that, did any of them retire to the other end of the room?—The men that came to show their good will retired to the other end of the room, where there was no fire, and by that means I did not hear what was passing among those that came to settle business.

Did you see where colonel Despard was?—He sat at the table towards the fire, with his right side against the fire; I did not hear what passed among those next the fire. Broughton, in the first place said to me, "There is the colonel, pointing over to him, did you ever see him before?" I said "no, I did not," says he, "he is a very fine man."

I asked Broughton whether he was fluent of tongue? he said, yes, he was.

Had you any conversation with Wood?—Wood spoke concerning being up in the Mall, between the private gate of his majesty and Buckingham-house; he said, "that would be the most proper place to attack his majesty, because there would be no horse-guards there when his majesty came out of his private gate after levee day to go to Buckingham-house." Broughton said, at the time, "the parliament house must be attacked, and after that business was done there, that they should hie away to the Tower directly."

Did you stay till the meeting was broken up?—I did not; I quitted that house about a quarter before ten o'clock.

Did you leave all the persons there whom you met?—I did.

Did you meet colonel Despard, or any of the other persons, after that time, before they were taken up?—I never met them again till they were taken up.

Thomas Blades cross-examined by Mr. Gurney.

How long have you been a soldier?—Nine years and four months.

Have you been so long in the Guards?—Yes.

How often have you been flogged in the Guards?—I have been punished twice.

Not three or four times?—I have been tried by three or four courts martial.

What for?—The first was for absenting myself from the regiment.

Is that what we call desertion?—Yes.

And you were punished only twice?—Yes; I was forgiven the first time.

Have you ever been flogged for any other offence besides absenting yourself from the regiment?—I never have been charged with any theft. I have been charged with beating a watchman.

You never have been charged with any theft; that you swear positively?—I was never brought to any bar.

Were you never charged with any theft without being brought to any bar?—No.

That you swear?—I do.

And that you swear positively?—I swear positively I was never brought before any justice.

I did not ask if you were brought before any justice; do you mean to swear you never had any theft imputed to you?—Never to my knowledge.

Have you never been charged to your face with theft?—That I am pretty sure of.

Cannot you be quite sure of it?—I am quite sure of it.

Do you know a person of the name of Tibbetts?—I do.

Do you mean to swear you never were charged by Tibbetts, and to your face, with having stolen something from him?—I worked for him. I had some leather by me, and some of it was lost.

Did he charge you with stealing any of it?—He did not charge me with stealing of it; he said I had made away with it.

How long ago is that?—The winter before we went to Holland.

And you mean to say you never, upon any other occasion, had any charge made against you?—No, none; but if you please to recollect, with regard to this leather, I paid Mr. Tibbetts for it, and he never brought me before any justice for it.

Thomas Blades re-examined by Mr. Sergeant *Shepherd*.

You have been asked, whether you had been tried for desertion?—I was tried for absenting myself from the regiment.

Mr. *Gurney*.—You talk of absenting yourself from the regiment; how far off did you happen to get?—About two hundred miles.

Mr. Sergeant *Shepherd*.—After you were tried for that, you were forgiven by the commanding officer?—I was.

And you were permitted by your commanding officer to join your regiment?—I was.

And you have served ever since?—Yes; and I have been on the continent during the war.

Where have you served since you joined the regiment?—In London, at Colchester, and Chatham. I served in the late expedition to Holland; and I was on the continent. I went to the continent the 5th of July, 1794, to the best of my recollection, and joined his royal highness the duke of York at Antwerp.

William Francis sworn.—Examined by Mr. *Plumer*.

Are you a private in the first battalion of Foot Guards?—Yes.

How long have you belonged to that regiment?—Two years last Christmas.

During the time of your being in that regiment, do you know of any practice of swearing soldiers, or applying to them to be sworn?—Yes.

Were you applied to by any body?—Yes, by the prisoner, colonel Despard.

When did he apply to you for that purpose?—At Tower-hill, near upon Bartholomew fair-day, in the month of September, I believe.

Had you been applied to before that time by any body for the same purpose?—Yes, by John Francis, and by Wood.

What had they applied to you to do?—To be sworn to their intentions against the king and government.

Was any paper or card produced to you?—Yes, many times.

Can you read?—I cannot.

At the time of applying to you, did they explain what the nature of the card or paper was?—They did.

What was it?—To overthrow the present

system of government, and kill all the royal family; and "help me God," was at the bottom of it; it was a small card.

What did they propose that you should do when you had heard the card read?—To kiss it.

Did you do so?—No, I never did.

You said Wood and John Francis had applied to you before colonel Despard had?—Yes, many times.

At what place did colonel Despard apply to you?—Near Tower-hill.

Was it a card like this?—Yes; that was the card that was first shown to me, to the best of my recollection.

Was there any paper besides that card?—Yes; a paper like this; the first I saw of them my brother John Francis shewed to me.

At what place was it that colonel Despard applied to you to be sworn?—At the Queen's Head, or the King's Head, a public house, facing Great Tower-hill.

What did colonel Despard say to you?—He, asked me, upon that day, "What were my principles, and my desire for the cause that was going forth of taking the Tower," or something of that nature, as near as I can recollect.

What did you say to him?—I told him I did not approve of it at all; I asked him what was to be done that day, as soon as I saw him upon the hill; he said, "There was nothing to be done, for he expected some money and news to come from France."

Did you see him upon Tower-hill on that day?—Yes; he met me in the street, and spoke to me before I saw him.

Do you know whether the people that were upon Tower-hill on that day continued or dispersed?—They dispersed.

How came they to disperse?—They dispersed towards night, because their plan could not be fulfilled as was desired; so John Francis told me.

Do you know by whose orders or directions they were dispersed?—By colonel Despard's orders, I believe.

Did you hear him say any thing about it?—Colonel Despard said, "There was nothing to be done"—he told me so with his own mouth.

Where was it that colonel Despard applied, to you to be sworn?—At the public house, the first time he read the paper over to me; I believe the words are in No. 1.

After he had read it over to you what did he do?—He read it over to me, and gave it into my hand to kiss.

Do you remember seeing colonel Despard afterwards at any place?—Yes; at the Bleeding Heart, in Hatton-garden.

Who were present there?—Myself, and John Francis my brother, Wood, and Macnamara.

Were there any more persons there?—Yes; there were a great many at that meeting that I saw.

And colonel Despard was there?—He was; that was a few days after Bartholomew fast.

Did you hear any thing pass with colonel Despard that day?—A paper was read over concerning the plan of taking the Tower, the Bank, and the Horse-guards.

Did colonel Despard say any thing to you that day about yourself?—He read over the same paper to me in the corner, at the top of the table; then my brother John and he desired me to kiss it. Colonel Despard said, "he hoped my principles were mented from the last time he saw me."

Did you comply with what he desired?—I did not; he said, "it was very odd that my principles were not the same principles as my brother's," or something of that sort.

Do you know the Coach and Horses, near Moorfields?—Yes.

Were you ever there?—Yes; on the Sunday after I came from Windsor.

Whom did you meet there?—One Connelly, otherwise Hays; he used to go by two names; Wratten I think was there, and Mack.

By Mack do you mean Macnamara?—Yes; Macnamara; he used to go by the name of Mr. Mack; and there were a number there, but I cannot recollect all their names; Wood and Newman were there.

What was the subject discussed at that meeting?—Concerning a paper that Wratten brought from Windsor, respecting the plans of government.

Were there any soldiers at that meeting?—Yes.

Do you remember their doing any thing at that meeting?—Yes; we drew our bayonets, and protested we would have a time fixed to make the grand attack upon the Tower, before we left the company.

Do you remember what was done with that paper which Wratten brought?—He never gave it into the grand committee; he told me he had not given it to the grand committee. I went to the Running Horse; we went to settle the business.

Prisoner.—I must beg your lordship to permit me, for a short time, to sit near my counsel; * I can make no communication from hence.

Lord Ellenborough.—You must communicate in the usual way.

William Francis.—Mack said he believed he should meet with the colonel at the Running Horse; we all went the remainder of the company that were left, to the Running Horse.

Did you go up stairs at the Running Horse?—Yes; we went into the front room, and as before, we drew our bayonets, and would have the time fixed before we left the room; or we would do it ourselves.

Did you see any body else there besides those persons who went along with you?—Mack was there; and he stated the desire of

we soldiers to send down to the grand committee.

How soon after that did you see colonel Despard?—Not a great while; I cannot say particularly as to the time, it might be a week, or it might be rather more.

Where was it you saw him next?—The next time I saw colonel Despard, I believe we had a shilling's worth of bratney and water, him and my brother and I.

Was the meeting by appointment?—No; we met him that time accidentally.

Did any thing pass between you and him then?—He offered me a small card which my brother gave to him; he looked it over, and then handed it down to me, meaning for me to kiss it, if I would; he said, "he was sorry I was not of the same principles as my brother and he."

Did you kiss the card?—I did not.

Did you tell him why you did not kiss it?—I told him I never would; that I had been sworn once to my king and country, and would never be sworn again.

Did colonel Despard do or say any thing upon that?—I cannot say that I recollect.

Do you remember ever seeing colonel Despard at the Black Horse?—At the Running Horse; I never was at the Black Horse.

William Francis cross-examined by
Mr. Sergeant Best.

How long have you been a soldier?—Two years last Christmas.

How often has it happened to you during the course of that time to get a flogging?—I never got a flogging in my life.

That you swear and protest?—Yes, upon the Bible or any book whatever.

You have no doubt about it?—I never was tried by any court-martial.

I do not ask you whether you ever did desert, but whether you were ever charged with deserting?—I cannot say that I was ever charged with deserting; I did desert, if you may call it deserting; I was scarcely twenty-four hours from one battalion before I was with the other.

Was that the only time you were ever charged with deserting?—It is.

And you are sure you were never flogged?—I am.

Whom did you leave Chatham with?—One Cassel.

Were there any inquiries after you?—A corporal and med' wets sent after both.

Why?—It is a general case if any desert, if they are out, to send to London after them.

Was that the only reason?—Yes; and some watches that Cassel had.

You and Cassel came away together, and the reason of the corporal and the med' coming after you, was for the watches also?—It was more on account of the man than it was for the watches, the watches did not belong to the army.

They were taken from a shop were they

* See Wall's case p. 51. of this volume:

not!—No, from different houses, and different people of the town.

And you travelled up with Cassel?—Yes, upon the coach.

Do you remember where the watches were put into pawn?—One or two were in pawn at Chatham, and when I returned again I fetched one or two out with the assistance of the corporal.

You told the corporal where these watches were to be found?—The corporal asked me if I saw any watch marked with a cypher at the back of it.

You happened to know where they were to be found?—I knew where that was, because I was with Cassel when he pawned it.

You saw him with some more?—Yes, I saw him give a coachman some.

You knew of his taking these watches away with him?—I knew it when he came from Chatham.

You saw him pawn one in Chatham?—Yes.

And after you were upon the road, you knew he had some more?—Yes.

And you travelled on to London together with these watches?—Yes.

Your brother is under confinement here?—Yes.

Do you remember his ever charging you with any thing?—Nothing at all of the meaning of that.

The meaning of what?—Nothing of the meaning of the watches or deserting.

Did not he charge you with robbing him?—No, never, I declare to God.

That you are quite sure of?—I am quite sure of it.

Nobody ever could have heard your brother charge you with robbing him?—No; nobody ever could.

You know George Davis?—I do.

What is he?—A soldier belonging to the same company.

William Francis re-examined by
Mr. Plumer.

Had Cassel been a watch-maker?—Yes, he was a watch-maker by trade.

You say before you went with him you did not know any thing respecting the watches?—Not when we went from Chatham, I did not know he had any more than his own.

You came to London?—I did.

Were you taken up, or did you voluntarily surrender?—I voluntarily gave myself up to the regiment.

And did you receive any punishment?—No; serjeant Derby got me a pass from a general in London, to go to Chatham again to join the regiment.

And did you receive any punishment?—I never did receive any punishment, I was forgiven; I joined my regiment on the morrow.

And continued with your regiment ever since?—I did, and will as long as I have breath to draw.

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Patrick Connell sworn.—Examined by
Mr. Garrow.

Is Patrick Connell your real name?—Yes, it is.

Is that the name by which you have been usually called?—No.

Did you, upon your apprehension, give in your name John Connell?—I did.

You were examined before the magistrate, and before the grand jury, by the name of John Connell?—Yes; my real name is Patrick, I was sometimes called Mich.

Lord Ellenborough.—Were you called by the name of John in the presence of the prisoner that night at the Oakley Arms?—Not that I know of, I never saw him before that night.

Lord Ellenborough.—Did you pass that night by the name of John?—I did.

Mr. Garrow.—Did you give in the name of John instead of your real name, in consequence of any thing suggested by the present prisoner, colonel Despard?—I did.

Being at the Oakley Arms, and there apprehended by the officers of justice, in the presence of the prisoner, you gave in your name as John, you say, in consequence of some hint from him?—Yes.

Tell us what that hint was?

Mr. Sergeant Best.—What name did you generally pass by in the world, before this transaction took place?—Patrick, and sometimes Mich.

What surname?—Connell.

Mr. Sergeant Best.—I submit to your lordship that this man cannot be examined, because he is not properly described in the list of witnesses.

Lord Ellenborough.—The witness assumes a different name by the desire of the prisoner; then how is the prisoner defrauded by a different name.

Mr. Sergeant Best.—Your lordship knows, that under this statute, it is required that those who advise the prisoner should be apprized of the christian and surname of those that come to be examined as witnesses against him, in order that they may inquire what sort of persons they are. Here I submit it is necessary they should be furnished with the christian and surname, which the witness has in the world.

Mr. Attorney General.—I had rather we should not have the benefit of the testimony of this witness, than that there should be any doubt about the prosecution.

Lord Ellenborough.—It is extremely fair and candid in the attorney general to relinquish the witness. Where a name is assumed for the purpose of fraud, I have very little difficulty in saying that the person who is guilty of the fraud, shall not avail himself of the objection.

John Bird sworn.—Examined by Mr. Garrow.

You are a shoemaker at Oakingham, I believe?—Yes.

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Do you know a person of the name of John Francis?—Yes.

Do you remember John Francis coming to you at your lodgings at any time in the month of August last?—Yes; he came to me at my lodgings at New Windsor.

Did he produce any thing to you at that time?—Not the first day when he came.

What passed the first day he came to you?—He asked me who I worked for; I said Mr. Grant, a shoe-maker; he asked me who he was; I said he worked for the royal family; he said, "he would be bound he was a pretty villain."

How soon did you see him again?—I believe it was the next day.

Did he come to your lodgings again?—Yes, he told me then "that the king would be de-throned."

Can you tell about what time that was?—The beginning of August.

Was he at that time stationed with his regiment at Windsor?—Yes.

The guards were at that time upon duty there?—Yes.

What more did he say to you?—He told me in what manner the new parliament would be raised.

What new parliament?—The parliament that was to be raised after the king was de-throned; "that every parish was to form themselves into a committee of fourteen, and then into seven, and one out of every seven was to come into the parliament house."

Did he produce to you at that time, or at any other, any paper?—Not at that time, he did at another.

Did any thing material pass at that second meeting more than you have already stated?—Yes; he asked me about Windsor Castle; he asked me what kind of a place it was: I told him I did not rightly know, for I was never in it farther than through the cloisters, and into the king's Cathedral twice. He asked me what plate there was in Windsor Castle, and if I knew whether it was silver or gold: I did not know; I could not tell him.

After this second meeting, how soon did you see him again?—I do not know whether it was that day or the day after, but he used to come almost every day, he told me when he came again he had got something he would show me; he showed me a card and offered to swear me.

Can you read?—Yes.

Did you read the card?—I did.

What did you do when you had read it?—I offered it to him again; he would not take it; he damned my soul, and bid me kiss the book.

What was you to kiss the book for?—I do not know.

Did he explain what he wanted you to kiss the book for?—Not then.

You offered to give it him back again and he would not take it?—No he would not; he

damned my soul, and bade me kiss the book; I put it to my head as if I kissed it, and offered it to him again; he did not take it quite so soon as I wished; I chucked it to him, and it fell upon the floor; he took it up, and put it into his pocket.

Should you know the card again if you were to see one of them?—Yes.

Read that card [giving No. 1., to the witness who read it]—This is something of the card he showed me.

Do you believe it to be the same in substance as that card?—I do.

Was it a card of this size?—It was.

Did any farther conversation pass between you?—Yes; at the same time he asked me to let him leave a book with me at my lodgings, which I refused.

Did he show you what the book was?—No, he did not; only he said it was a book that he did not like to keep at the barracks.

He did not show it you, or explain what it contained?—He did not.

Did he say any thing about any pay that was to be given to any one?—He offered me three shillings, or three and sixpence a day to come along with him to London, and a twenty pound note the day I was called upon.

What were you to come to London to do for this pay?—To join his society.

For what?—"To fight, to burst the chain of bondage and slavery;" that was the answer he gave me when I asked him.

John Pike, sworn.—Examined by Mr. Garrow.

Are you a soldier in the guards?—Yes.

Do you know one Weed of the first regiment?—Yes.

Did he at any time at the barracks make any application to you, and show you any card?—Yes, he did.

Were you in the same company with him?—Yes.

What did he say to you?—He showed me a card and said, "Will you agree to this, and abide by it."

Can you read?—Yes.

Did you read the card that he showed you?—Yes.

What did you do with it?—I returned it him when I had read it.

Can you state the substance of it?—I cannot:

Was it in size like this card?—It was.

Read it over [the witness read it]. Was it in substance the same as that?—Yes: I returned it back to him when I had read it, and told him I would not.

What more did he say to you about it at that time?—He told me "that there were upwards of three hundred or four hundred of the soldiers of the third battalion lying in the Tower, that had already engaged in the constitution society."

Did he mention how many there were of

the first battalion, that which you belonged to?—He said about thirty of the first battalion.

Was the Constitution society that which he described, and gave you that card to accede to?—It is.

Upon your coming to London with the battalion from Windsor, did you see Wood again?—Yes.

Do you know a person of the name of John Francis?—Yes.

Did you see him and Wood together?—Yes.

Did they invite you to go to any meeting at any place?—Yes, to the Ham and Windmill, in Windmill-street.

What did they propose to you to go for?—To have something to drink along with them; that it should cost me nothing.

Did you go in consequence of that?—I did; I went along with David Morgan of the same company that I belonged to.

Whom were you directed to ask for?—For John Wood, and John Francis.

What evening of the week was it?—On Sunday night.

How soon was it after the battalion came from duty at Windsor?—The second Sunday after.

What part of the house did you go to upon your first going in?—I sat in the tap-room.

Were there any more soldiers there?—Yes.

Did you continue in the tap-room?—There was, a man came down, apparently an Irishman; he asked me if I would go up stairs with my comrade Morgan, and some more soldiers in the tap-room.

Did you and Morgan go up stairs?—We did.

Did you find Francis and Wood there?—Yes.

What number of persons did you find there?—About eighteen soldiers and three men dressed in coloured clothes.

Do you think you should know either of the persons that were there, who were dressed in coloured clothes if you were to see them again?—Yes.

Look round the court, and see if you discover either of the persons who were there in coloured clothes?—I cannot see him.

Was there any drinking going forward?—Yes.

Do you remember any sentiment given as a toast?—Yes, one I remember: "May the wings of liberty never lose a feather."

That was given as a toast and drank accordingly?—It was.

Do you remember any expression that Wood made use of when you returned him the card?—Yes; he said, "If either me or any other man were to divulge the secret, we should be immediately put to death."

You do not know all the soldiers by name that were at this meeting at the Ham and Windmill?—I do not.

Tell us the names of those you do recollect?—There was John Francis, William Francis, Thomas Newman, David Morgan, James Saunders, Job Roberts, John Rogers, and there was one there of the name of Brown.

Did Wood and Francis, or either of them, when conversing about this plan, say any thing about pay, if you would engage in it?—Yes; John Francis told me, that when we returned to London we should receive three shillings and sixpence per day.

After the meeting you mentioned at the Ham and Windmill on Sunday, did you see any of these persons again, or Francis or Wood, till after they were in custody?—I saw them once at the Bleeding Heart, in Charles-street, Hatton-garden.

Was that a meeting of the same sort, and upon the same subject?—Yes, it was.

Were there soldiers present at it?—Yes.

Were Francis or Wood present at that meeting at the Bleeding Heart?—They were both there.

Was the business the same as had been discussed at the Windmill, in Windmill-street?—It was.

John Pike cross-examined by Mr. Gurney.

How long have you been a soldier?—About three years and eleven months.

Had you ever the misfortune to be punished since you have been in the guards?—Yes.

What sort of punishment did you receive?—Two hundred lashes.

What was that for?—For absenting myself from my post when on the king's guard, a sentry in the prince's gardens.

Were you never charged with any other offence?—No.

You never had any other offence imputed to you?—Not that I can recollect.

Trying your recollection, do you never remember having any imputation respecting eggs?—No; not to my knowledge.

Will you swear positively, that nothing of that sort ever did happen?—Yes: I never was told of ever stealing eggs in my life.

I did not ask you whether you were taken up, but whether, without being taken up, it never was imputed to you, that you had stolen any thing?—No; it never was.

Have you never been punished more than that once?—Never.

Are you a private in the guards?—Yes.

Have you always been a private?—No; I have been a corporal.

Have you been reduced from being a corporal more than once?—Twice.

And you are now a private?—Yes.

How long have you been a private the last time?—About eighteen months.

Robert Tomlinson sworn.—Examined by

Mr. Common Sergeant.

You are, I believe, a soldier, in the first regiment of guards?—Yes.

Were you at the Ham and Windmill, in Windmill-street?—Yes.

When?—I cannot tell properly the time; it was the second Sunday after the battalion returned from Windsor.

When you went to the Ham and Windmill, how many people did you find there?—Upwards of forty soldiers, I believe.

Did you know any of them?—Very few of them; Saunders I knew, and Francis I knew very well.

Did you know any others?—No other but Joh Roberts, with whom I went.

Do you mean John or William Francis?—

William, I believe his name is; it is the youngest.

The fair man or the dark one?—The fair one, the evidence.

Was there any other person whom you knew there?—No.

What passed?—They were drinking, and a man asked me "If I would be sworn in;" I asked what that was; he said, "A free and easy society."

Who was that man?—Macnamara.

To be sworn in for what?—A free and easy society to overthrow the government, and have our nation the same as France.

What else was said to you?—He asked me whether I would come again the Wednesday following; I told him I could not, I should be on duty.

You never went there again, I believe?—No; I did not.

Job Roberts sworn.—Examined by Mr. Common Sergeant.

You are in the first regiment of foot guards?—Yes; I am.

Do you recollect the day you went to the Ham and Windmill?—It was on a Sunday; I cannot rightly tell what day of the month it was.

Was that the day you went with Tomlinson?—Yes; we went together.

How many soldiers did you find there?—I did not count them; there were a good many; I dare say between thirty and forty.

What passed?—I did not stop; I was drinking a pint of beer in the house; a gentleman came and asked us to go up stairs; we went up stairs, and he went down, and, as I was going down stairs, a man in coloured clothes, who looked like a tradesman, followed me, and asked me to sign a paper.

Who was he?—I do not know; I thought it was the last man when the prisoners were here the night we were here, but I do not know positively.

Peter Pollard sworn.—Examined by Mr. Wood.

Did you ever go to the Oakley Arms?—Yes.

Did any body ask you to go there?—Yes, Daniel Tyndall.

Do you work with him?—Yes.

What is he?—A carpenter.

Were you there more than once?—No.

When was that?—On the 16th of November last.

You were there when the prisoners were apprehended?—Yes.

Was Tyndall your own master?—Yes.

John Emblin sworn.—Examined by Mr. Garrow.

What are you by business?—A watch-maker.

Where do you reside?—At Vauxhall.

You were one of the persons found at the Oakley Arms on the 16th of November?—Yes.

Who was the person who first intimated to you that there were meetings at that place?—A man of the name of Lander.

How long ago is it since he first gave you the intimation?—As near as I can recollect, it was about four weeks before I was apprehended at the Oakley Arms. I cannot speak with particularity to the day.

What did he say to you?—He asked me if I had heard any news. I told him no; he said, "there was something very particular on the carpet." He asked me whether I had heard of any society forming. I told him no; I thought they were all done with: he told me, no; that there was a party forming stronger than had ever been yet; and that they looked up to colonel Despard as their head.

After this intimation from Lander, did you see a person of the name of Broughton?—Yes.

How long might that be before the 16th of November?—I frequently saw Broughton and Lander in the interim.

When was the first meeting at which you saw Broughton, after this intimation from Lander?—I cannot tell the first, but to the best of my recollection, it was on a Sunday.

What did Broughton say?—I and Lander were talking together, and Broughton came up. I objected to the plan of the thing, and he flew in a passion, and seemed confident of success.

What did you object to?—To the plan.

The plan of what?—The plan for overturning the present government. Broughton called them "the Man Eaters."

You objected to this plan, and Broughton flew in a passion, and spoke with certainty of success?—Yes.

Did they, or either of them, invite you to attend the meetings of this society?—Broughton has frequently.

Did you at first assent to his proposal?—I told him at first I could not; for I had my family to attend to, and they took up all my attention.

Did you tell him that at first, or upon repeated applications?—On repeated applications; the last time but one that he called at

my house I was set, and he left word with my wife.

Did he, at any of those times when he was pressing you to attend the meetings of the society, produce to you any papers?—Yes.

For what purpose did he describe them to be?—He described them to be tickets; but they were about the sixth part of a sheet of writing paper, badly printed.

Did you read it?—Yes.

Did you give it back again?—No; he said "it was for a security to know their friends by;" and at the same time he told me, that "when the attack was made, that all who were not of their principles would be put to death."

Be so good as look at the paper that will be shown to you, and see whether it was similar to that [the witness looks at the paper]?—It began, I, A. B.; this is the language of the paper I had.

Give me that which you say is the language?—They were all the same; but this was the language pretty much.

Do you remember, on Friday the 19th of November, being at the Queen's-arms at Vauxhall?—Perfectly well.

Whom were you with there?—With John Hayes.

Do you know a person of the name of Graham?—Yes.

Was he with you there?—Yes.

Whilst Graham and you were together, did Broughton come there?—Yes; he came and tapped Graham on the shoulder, and asked him how he did. Broughton was sitting by the fire, and I was in a back box; he then saw me, and came and sat down and drank with me; he asked me to go to the Flying-horse; he said "there would be such a nice man there, he was sure I should like his company."

The Flying-horse at Newington?—Yes.

Did you at first agree to go?—No; I asked him who this man was; he said "it was colonel Despard."

Before you agreed to go with him, had he told you of any thing that was to be done on any day nearly arrived?—He said, "the day was fixed for the attack to be made when the king went to the House. The king will be stopped when he goes to the House, and the business will be settled."

Did he say any thing more of what would be done that day, besides stopping the king, and settling the business?—I believe he said, "the Tower was to be taken that day," but I cannot positively charge my memory.

After he had told you who this fine gentleman was, did you go out of the public-house?—Broughton said, "he must go, because the colonel was punctual to his time, and he had already exceeded the time;" and he went out and took Graham out with him. I made an excuse to go out; and I heard him persuading Graham to go; they seemed to turn towards

the house. Again I met them, and said, if you will go, Mr. Graham, I will.

Did you return again to the house?—We did; but Broughton went. Graham agreed to go, and said he would be there in an hour.

Did Graham make any observation on that?—He said, "I did not know that you were of those sentiments."

What answer did you make?—I replied, no more I a'n't; only I have a mind to go and see the humour of it. He said, so have I.

Did you afterwards go with Graham to the Flying-horse?—Yes.

Whom did you find when you came there?—Colonel Despard.

Is that the person?—Yes, that is he.

Whom did you find with him?—Broughton, Windsor, and Smith.

Where were they?—They were sitting in a room on the left hand, in the back parlour below stairs, a small back-room.

Then Windsor was there before you came in?—Yes; we were the last two that did go in.

When you went in how did you find them engaged?—In conversation.

What passed on your going into the room?—Broughton desired us to come and sit down. Graham took a chair and placed himself by the side of colonel Despard, and I sat down next to Graham.

Was this the first time of your being introduced to colonel Despard?—It was the first time of my being introduced to those meetings.

What was Windsor conversing about when you went in?—The form of passing the keys at the Tower.

The keys passing the sentry?—Yes.

What did he say about that form?—He said, "that it had been customary when the constable passed the keys; when the keys passed the sentry for the constable to say, God bless the king, and queen Charlotte; and then the sentry was to answer, Amen: that that was the ancient ceremony, but it had been laid aside for some weeks, except in one instance, and the man had been scouted for using the ceremony."

Did you ask any question of Broughton as to colonel Despard?—Yes; I asked him who that gentleman was.

You did not at that time know colonel Despard?—No; Broughton told me who he was. I thought the colonel heard me. I considered it as a piece of rudeness, Broughton's leaning across him to whisper to me. I said, Sir, I beg your pardon, I had not the pleasure of knowing you before; but I have read of you in the Cambridge paper. The conversation turned on the Wet Docks, between Windsor and others. I cannot tell you the exact chain of conversation.

Some complaint of the guards being employed at the Wet-docks?—Yes; but after some time I asked colonel Despard whether there was any particular business in hand,

and what he thought of it; he said, "nothing particular; only it seems the wish of a great many people, that an effort should be made on Tuesday week next to recover some of those liberties which we have lost, and the day is fixed for Tuesday week next."

"Did you put any question on that?—I asked him if he had any ground or sufficient force to go upon; he said, "yes, a very considerable force indeed; leastwise I can only say, if the people come forward as I have been given reason to understand, we have great numbers of the army; and there are great numbers in all parts of the kingdom, in Birmingham, Manchester, Leeds, Sheffield, Yorkshire." I do not say that I enumerate the places exactly as they were enumerated to me, but he mentioned all those places.

Do any more places occur to you?—He said, "And here, in and round London, the people are every where ripe." And I recollect he mentioned Chatham; he said "that he had been engaged in this business for these two years." I am not positive whether it was these two years, or more than two years, but it was one or the other. "I have travelled above twenty miles to-day," (meaning the day on which I saw him, I understood him so). "and the people wherever I have been are every where ripe, and anxious for the moment of attack." I recollect at the same place, I cannot charge my memory with the exact order of the conversation during that evening; but I recollect asking him if he had any regular organization, he said, "No; a regular organization would be a moral impossibility."

Why?—He did not exactly state the reason why; but he said "it would be too much connected with government; under the eye of government; but in the country it was more general."

What organization was it then that would be improper?—He did not give the reason, or state that. I asked him whether the attack was to be made in London and the country on one and the same day. The exact form of the question I cannot recollect, but that is the substance; he said, "No, by no means, that would be highly improper: but that it would be a signal for the country the stopping the mails and stage coaches." During the evening, Graham clenched his right hand, and swore with an oath, "You will do no good unless you secure the whole of the family." Broughton, in a sort of knowing, low, vulgar way, shook his head, and said, "that is easy enough done; that is already settled." I asked him how, he said, "take and shoot two of the horses, and then" he swore "the carriage must stop."

What carriage were you speaking of?—The king's carriage, I understood so, "and then seize him directly."

On what occasion was this to be done?—When the king should return from the parliament-house. I replied, do you consider that there are horsemen riding close by the car-

riage, with their horses heads almost in the window; and any person attempting such a thing would be cut to pieces, then who would do it.

Who would execute so dangerous a thing?—Yes, that was my meaning; colonel Despard replied, "I would do it with my own hand."

Are you sure of that expression?—I am sure of that; I should be sorry to say it if I was not. I cannot say that my memory charges me with any more against the prisoner at that meeting: however painful it is to me to stand here, yet I consider it my duty to speak the truth, and I would not wish intentionally to keep any thing back.

Do you remember any expression respecting having weighed circumstances?—I recollect colonel Despard saying, "I have weighed this matter well, and my heart is callous."

Are you perfectly sure, that in some part of the conversation he used that expression?

—Yes, I am sure he did; I rather think it was after saying he would do it with his own hand; but I do not say upon my oath whether it was then or not.

But are you positively certain that the expression was used by him?—Yes, I am positive.

Were any objections made by any of the company as to the Tower and the Bank?—Yes, I can only tell you a conversation passed as to seizing the Bank; so far I recollect, but the exact words I cannot tell. Then it was agreed the Bank should be seized, and the Tower should be taken. Respecting the Bank, I particularly recollect they said, "the arms there had been rendered useless;" and to the best of my recollection, "that they were about six hundred stand in number."

Do you recollect the particular mode in which it was stated that they had been made useless?—By some part being taken off; but I cannot charge my memory what part.

Do you happen to recollect who said that?—I think it was the colonel.

If I understand you rightly, whatever was said there, whether uttered by him or not, was in his hearing?—Most assuredly so; but I cannot say that every person in company heard every thing that was uttered, because two or three might be speaking at once, but I am confident he heard the greatest part, for I chiefly engrossed the conversation while I was there, never having seen him before; it was my curiosity that has brought me into the situation in which I now stand here; and I begged his pardon two or three times for my inquisitiveness and impertinence.

Do you recollect the particulars of the conversation about seizing the Tower?—No; but I know it was made a matter of confident success. I recollect one person, which was Windsor, said, "Give me a hundred men and I will take the Tower myself."

In the presence of colonel Despard?—Yes.

And it was talked of as a matter in which they were confident of success?—Yes.

Did colonel Despard continue there the whole time you did?—No, he went away and left us there.

Did he go alone?—Yes.

You continued there for some time afterwards and then went away?—Yes.

Do you remember seeing the servant of the house?—Yes. I hope you will not think of mentioning what was said jocosely; there is no harm attaches to it.

You gave her something, with an observation—I gave something: they would not let me pay; I did not like to appear behind hand with any of them, and I took something out of my pocket and gave her.

You were not permitted to pay any thing?—Yes, I did in the room, but not at the bar; the girl seemed awkward at taking it, and I said, never mind, I will have a kiss the next time. It was spoke only jocosely.

Did you see any thing more of colonel Despard, till you were at the Oakley Arms?—No.

At what time did you go to the Oakley Arms, on the evening on which you were apprehended?—I think about eight o'clock.

Was that a meeting held by appointment?—I do not know; I did not expect to meet any body there scarcely.

Who invited you?—Lander in the day time had been talking of the attack on the Tower; and he wished to know, "whether it would not be prudent to have a division to march from the Tower to New-street."

New-street, Bishopsgate?—Yes; and there take the arms belonging to the East India company."

Whom was he talking with when he said that?—With me; "and then from there to go to the Artillery-ground, where they would meet with more arms, and also pieces of artillery, and then from there, if they could be spared to come forward and assist on the attack on St. James's, and if they had a sufficient force at the taking of the Tower, he also proposed that another detachment should go another way through the Borough, and through the New Cut, and so to the parliament house, to assist those that would be there;" and he said, "he thought it would be proper to have couriers to ride backwards and forwards, and give an account of the situation and success of the army;" and if I understood him right, "he had been on the Sunday previous to that, to engage a house, where," I understood him, "he was to sit and receive the reports of those couriers or aid de camps," or whatever they might be termed; which house, to the best of my recollection, was the sign of the Angel, in Cecil's-court, St. Martin's lane; he then asked me to write this down.

This direction?—No, this plan. I refused; he seemed to look at me with astonishment; for you are to understand I never was sworn

in the society, and they seemed to look with a jealous eye upon me sometimes.

And he appeared surprised?—Yes; I then said, if you please I will go with you to the colonel, if you can introduce me to him, and see what he says about it; but Graham had called upon me on the Monday, and had had a conversation; and I think Lander, at this conversation with Graham, which you do not perhaps judge it necessary to enter into——

It is sufficient, for the present, that you had a conversation with Graham, which you reported to Lander. What did he say as to introducing you to colonel Despard?—He said, yes, he would do it this evening. That evening as I was going home with a clock, I met Broughton near the turnpike; he then said, "I understand you are coming down to-night."

Had you not told him so yourself?—No; "do," said he, "but do not be long first." I said, "I cannot come till I have put my clock up." He and I parted. In going on, I saw Lander shutting up his shop: I went past his house, to where I was going with the clock: he asked me if I was ready; I told him, no, I was obliged to go home with that clock; he said, how long should I be? I said, about a quarter of an hour; he said, if I would not be longer, he would wait for me, but he was in a hurry, as he had to go to town; when I returned he was gone, and I went to the Oakley Arms by myself.

Who had given you the Oakley Arms as the place to which you were to go?—Broughton and Lander too.

At what time did you arrive there?—I am not quite sure; I think I might have been in about twenty minutes when the officers came in.

Had you been at that house before?—Yes; but not to hold any of those meetings. I should have mentioned, that going home from the Flying Horse, on Friday night——

Mr. Garrow.—That does not appear to me to be material. You went to the Oakley Arms about twenty minutes before the officers arrived?—Yes; I went into the parlour; I saw some persons that appeared to be strangers; they asked, who do you want? I said, Mr. Broughton or Russel; they said you will find them up stairs. I went up and went in; Broughton saw me come in, and called me to come and sit down by him.

What number of persons were there?—I judged there must be above twenty.

Did any come in after you?—There were two came in, Smith and his journeyman, after I went.

Among others, was colonel Despard there?—Yes.

On Broughton perceiving you, he desired you to take a seat by him?—Yes.

How were the parties engaged when you came into the room?—In a promiscuous conversation one with another.

Was colonel Despard sitting or standing?—I believe standing; to the best of my recollection, speaking to John Francis.

What happened after you came in, before the officers arrived?—I had not been long seated before Broughton said, "My boy, my cock, we have the completest plan in the world, which will do the business without any trouble." I asked him what was that? He said, to load the great gun in the park with four balls or chain shot, and fire it at his majesty as he returns from the House." Then, with a kind of a sneer, said, "he would be damned if that did not send them to hell," and so on.

You must repeat the expression, however disagreeable?—I confess the expression shocked me much, and I said good God, do you consider how many people will be in the park that day, and how many lives you will take away. He said, "then damn them, let them get out of the way;" then he said, "it would play hell with the houses at the Treasury, and round about there." Some person in company said, that the cannon might be too low; another said, it might be easily raised an inch; some person said, but if it misses his majesty? Broughton replied, "then damn him we must man-handle him." I do not think I am giving you the evidence so correct; I rather think I had a conversation with the colonel before this.

Do you mean to alter the expressions you have used?—No; only I may have misplaced it.

Consider, before you go on, whether the conversation with colonel Despard was the first, or this?—I am divided in my mind about it; but to the best of my recollection I had had a conversation with the colonel before this.

How near was the colonel to you and Broughton, when you were holding this extraordinary conversation?—As near as you and I are I suppose, but I do not pretend to say that the colonel heard it.

Will you state to us the substance of the conversation you had had with the colonel, as you believe, previous to this?—I asked Broughton whether I might speak to the colonel.

This, according to your present impression, was said after you came in?—Yes, I judge it was. I said to the colonel, sir, you were speaking of taking the Tower.

Alluding to the former conversation you had had?—Yes; at the Flying Horse. Lander said, "would it not be proper to have a division go from there?"

You then repeated Lander's plan as he had mentioned it?—Yes.

The plan which Lander wished you to write down?—Yes; he objected to it.

Did you conclude with any observation of your own?—I do not believe I did. He said he did not approve of it. I do not remember the exact reply, but that, "he did not approve of it. For why, he believed that one half of

the company's men were our friends already," but he says, "my good, sir, we are not sure that we can have the Tower, but if we have, we have every thing, for there are arms sufficient to arm so many men." I cannot say how many, but it was a great number seemingly, and more than would be wanted.

He mentioned a number which you do not recollect?—Yes; more arms seemingly than they should want. He said, "to go to the Artillery-ground would be useless; for, what purpose would it answer? it was to form a sort of garrison to annoy the associations."

You stated, you understood that was Lander's plan?—Yes. He said, "No; St. Paul's would be a great deal better place." I cannot tell you exactly the terms. After we had had that conversation, the colonel replied, "If we have the Tower and the Bank, we have every thing." I recollect I told him that Graham had said, that the Bank should not be mentioned. Do you think, sir, it would be proper to meddle with the bank? He said "Surely the bank ought to be almost the first consideration; for if we have the Bank and the Tower we have every thing; that he could from the Tower, if necessary, burn the town, and batter it to pieces."

Do you recollect any thing more?—Yes; I overheard some person saying something about destroying the telegraph. I spoke to the colonel, and said, sir, they seem to think of destroying the telegraph; do you suppose that would be necessary? He replied, "Surely, for it is a thing that would be of no service to us, but of vast importance to our enemies." I cannot say that my memory charges me any farther.

Soon after these conversations, the police officers came in, and you were secured?—Yes.

You mentioned, in the early part of your evidence, seeing Windsor at the Flying Horse?—Yes.

Was he known to you, or was he a stranger before that?—A total stranger to me.

John Emblin cross-examined by
Mr. Sergeant Best.

Where do you come from here?—From Witney, in Oxfordshire.

Are you in custody?—Yes.

You were brought up here in custody to give evidence?—Yes.

Have you been in custody ever since?—Yes.

Mr. Garrow.—Let us understand on what charge; you were secured that evening, and have been in custody on this charge ever since?—Yes.

Mary Plowman sworn;—Examined by
Mr. Fielding.

You live at Newington?—Yes.

Do you keep the Flying Horse there?—Yes.

Do you remember hearing of the people

being apprehended at the Oakley Arms?—Yes.

Are you enabled to carry back your memory from that circumstance, so as to relate what passed in your house two or three days before that?—There were two or three gentlemen there a few days before.

On the 12th of November, a Friday?—I cannot positively say to the day.

What rooms does your house consist of below?—The tap-room, a small parlour, a kitchen, and the bar.

Do you know whether that parlour had any persons in it that evening?—There were, to the number of about six, I think, went in that night.

On that evening, at what time did the first person go in whom you noticed?—A little before eight.

How did they get in?—They went in at the street door, and through a passage.

Did they go immediately through the tap-room into the parlour, without taking notice of you?—I was working in the back room when they came in.

How many were there?—Two.

How were they dressed?—One, I can tell, was dressed in a dark brown great coat, and an umbrella in his hand.

Did they go into the parlour?—Into the back room, which is called the kitchen.

Did any other persons come in, who made their way towards the parlour?—Yes; there were to the number of about four came in after that; I believe they all went into the back room.

What sort of a room was it they went into?—A kind of kitchen, which we call the back parlour.

Was, or was not, the door shut when they were in?—Yes, and the curtains were drawn. They seemed very much in private.

Did they draw the curtain, or was it drawn before they went in?—They drew it.

Did you happen to be near this room, so as to overhear any thing said by them?—I was in the bar, leaning over the bar, and I heard one say, "He had weighed every thing well within him, and God may know, his heart was callous."

Do you happen to know a soldier of the name of Windsor?—Yes; he worked for one Mr. Broomfield; we served him with beer before this.

Do you remember whether there were any persons there before Windsor's arrival?—Yes, there were two; they were in the tap-room; he asked whether any body had asked for him; there came two men more through the tap-room; he observed that the company was backwards and joined them.

Was your husband at home?—Yes; but he was out with his beer that evening.

How was the reckoning paid, as to what was had in the parlour?—I cannot say how it was paid; the servant went in and took the money.

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Do you recollect their leaving your house?—Yes; it was a little after eleven o'clock.

Did any thing pass between any of them and your servant at the bar?—They came to the bar and had four glasses of gin and a glass of rum, which came to nine-pence. I gave three-pence change to a little man; he gave it to my maid, and turned and told her he would have a kiss for it next time he came. There was a tall swarthy man desired I might not give him wash; Windsor answered and said, what he had would be good here.

Do you recollect how many there were in number that were at your bar when this passed?—Five.

One was gone?—Yes.

Can you tell whether the person who had left the company, was the person who had the umbrella?—Yes; it was he that was gone.

Lord *Ellenborough*.—Where were you sitting when you heard those words?—In the bar.

Were you at such a distance that you could hear a person in the back parlour, if he was speaking in an ordinary voice?—If he spoke slow.

Was he speaking very loud?—No.

How far were you from it?—A very small distance; it is a wainscot that parts that room.

As far as you are from me;—Thereabouts.

Sir *Richard Ford* sworn.—Examined by
Mr. *Solicitor General*.

Did you take the examination of the witness Windsor?—When he was examined at the Secretary of state's office, I wrote down that examination.

Did you, in consequence of that examination, call before you any soldier?—Either in consequence of that examination, or other communications which Windsor made verbally at that time, some soldiers were examined.

Were any of the soldiers who have been examined to-day, taken up?—They were sent for and examined; I believe not taken up.

Blades and William Francis?—Yes.

[The end of the evidence for the crown.]

Lord *Ellenborough*.—Prisoner, would you wish to say any thing for yourself, or leave it to your counsel.

Prisoner.—I leave it to my counsel.

DEFENCE.

Mr. *Sergeant Best*.—May it please your Lordship; Gentlemen of the Jury;—It now becomes my duty to address you in behalf of the gentleman at the bar; and you will easily conceive it to be one of the most anxious and painful duties that can be cast upon any man. For, be the case of the prisoner what it may, when it is recollected that the issue of it is his life with honour, or his death with ig-

nominy, and that duty exacts from me, that now, when I am exhausted with fatigue, and embarrassed by the novelty of the situation in which I am placed, I should, with a judgment equal to the importance of the case, select those features of it that are to form the grounds upon which he expects you shall presently deliver him, and lay before you these topics with that degree of clearness which is necessary to give them their proper effect;—you will see that I am loaded with a dreadful responsibility, sufficient to awaken the fears and almost to destroy the energy of the stoutest man.

Gentlemen, I do assure you, that if I did not feel I was standing before a British court of justice, where I have all those peculiar advantages which the learned attorney general has enumerated;—the advantage of being assisted by the noble and learned judge, who by his office is of counsel for the prisoner, upon this occasion,—and the advantage of knowing that he who represents the unfortunate, is sure to receive from a British jury, who know that it is the just principle of the law they are to administer, that justice is to be tempered with mercy, the utmost indulgence, I should be utterly incapable of addressing you upon this most momentous occasion.

The learned attorney general, with great propriety, has stated to you, that it is a principle uniformly acted upon in the administration of criminal justice, that the greater the crime imputed to the prisoner, the greater should be the caution which a jury should exercise, before they deliver him who is charged with that crime to the vengeance which necessarily awaits him in case they should say that he is guilty. Gentlemen, after what his candour has admitted, it is not necessary that I should press the observance of this principle upon you. I will only say, it has the sanction both of practical and theoretical learning; it has been repeated by learned judges as constantly as cases for its application have occurred, and is to be found in the valuable works of the most able and experienced writers who have written upon this subject. If this principle be necessary to regulate the judgment and to check the prejudice which a detestation of guilt is likely to excite in the most honourable and humane minds, and which is apt to confound the distinction between accusation and conviction in ordinary crimes, where you are only affected by compassion for those who have been the objects of them, and a sense of the dangerous tendency of allowing criminal actions to pass unpunished, how much more so must it be in the case of high treason, in which you are liable to be impressed with a sense of direct and immediate interest—an interest of the most powerful kind—that which arises from fear for your own safety.—For, what idea does the charge of high treason convey? that the accused has aimed against the life of the monarch whom we love, and with whose existence

and welfare we feel our own inseparably connected,—at the destruction of a constitution which we consider to be the glory and happiness of our country,—and at the subversion of laws by which we feel ourselves protected. It must therefore be the misfortune of one who is to be tried for this crime, that his jury cannot feel devoid of any feeling of interest. In such a case, common caution against prejudice is not sufficient. You must forget all you have heard on this subject, except from the witnesses;—you must abstract yourselves from your country, upon which a traitorous attack has been supposed to be made;—and, as your sole aim is to do justice, you must guard against any presumption of guilt, unless it be clearly raised by the evidence, by a jealousy not only of those who prosecute, but even of yourselves.

The attorney-general stated some advantages which, according to the English law, a prisoner for treason has when put upon his trial; and he alleged that the known prejudice against him was one of the causes of these advantages being allowed. I am perfectly persuaded that it is one of the causes. Those who planned that great and glorious scheme of liberty which was effected by the Revolution in this country, saw how absolutely necessary it was, where the state is the actual prosecutor differing from the common case,—where the king prosecutes merely as trustee for the public,—where the prosecution is to be supported by the weight of the law officers of the crown, when the general prejudice that I have described co-operates with that weight, they saw how necessary it was that a prisoner should have more assistance in the defence he is to make than in ordinary cases. I cannot help thinking this is one of the most beautiful parts of the constitution of this country. It has been said by those who have considered this subject, that there is nothing which so completely shows the existence of liberty in any country, as the fair mode of administering justice in cases where the state supports a prosecution against an individual. That part of the law of treason which relates to the trial of a traitor, shows to us the laudable anxiety of our ancestors, that those who are placed in the situation of the prisoner should have a candid and dispassionate investigation of their cases. I believe no similar provision exists in any other part of the world; and I trust the statement of it will teach those (if there are any such) misguided men in this country, who wish to overturn its constitution, that enthusiasm itself cannot imagine a motive for treason; that if any thing like a state of liberty is to be attained, it exists in this country, in which those who stand in the situation in which this unfortunate gentleman now stands, charged with an attempt to overturn all that is dear and valuable to us in the world, has such peculiar advantages; if instead of that dreadful crime which is imputed to this gentleman, he had

been charged with murder, I should not have had an opportunity of addressing you as I now have; but, for the reasons I have stated, this gentleman has that advantage, if indeed it be any advantage to him, when he has thought proper to select one so feeble as myself to address you upon this subject. If he had been tried for any other offence he could not before his trial have seen the charge intended to be made against him, but in this case he is allowed, and has received a copy of it. He could not have known the witnesses who were to prove the charge, or the jury who were to decide his fate; but in this case he is entitled to, and has received lists of both. Why do I make these observations? for the purpose of showing, that those who have founded that liberty we now enjoy—for the purpose of showing, that those who have created that jurisdiction under which we are now sitting—were satisfied of the truth of the observation which the attorney-general has made, that a person standing charged with high treason is entitled to peculiar advantages on account of the prejudices that must exist in the mind of every one respecting a man circumstanced as he is circumstanced, for the reason I stated before, that those who are placed in the situation of jurors are in danger from the abhorrence they feel of the offence, of being satisfied without sufficient evidence of the guilt imputed, and thereby of delivering him over unjustly to judgment.

Gentlemen, having made these observations, I am persuaded it will be unnecessary for me to desire you to do all that men can do to divest yourselves of that prejudice which you feel against a man in his situation;—to do that which the attorney-general has emphatically and distinctly told you to do—that which the law of this country has told you to do—that, without which there can be no liberty existing in this country—that is, TO PRESUME HIM INNOCENT TILL GUILT IS ESTABLISHED IN EVIDENCE; for, until his guilt be made out, not merely by vague and unconfirmed stories told by suspicious witnesses, but by that species of evidence which is required by juries in cases of this sort, it is your bounden duty to presume him innocent.

Gentlemen, permit me now to call your attention to some few rules of evidence which have been wisely, by the law of the country, adapted to criminal trials. Some of the rules are applicable to cases in general; but the first which I have occasion to mention, and in which I am persuaded I shall receive the sanction of the noble and learned judge, for I cannot suppose you will give your verdict upon any speculative notions of mine, except as that speculation is confirmed by his lordship; but I am persuaded the principle I am about to state is one by which the noble and learned judge will tell you you ought to guide yourselves in the determination of the question which will presently be submitted to you.

I perfectly agree with what was stated by the attorney-general that this is almost a question of fact; it is impossible for any man to argue—God forbid that any man who wears the dress I now wear, should attempt to argue in this country—that if that which is laid in this indictment is made out by the proof adduced in support of it, it does not in point of law amount to high treason; the only question that will be for the consideration either of the Court or of the jury is, whether these different facts alleged upon this indictment are made out by clear and satisfactory evidence, or whether there is not a total absence of the best evidence the nature of the case would warrant, if the facts ever existed which have been laid before you.

It is a rule of law upon the subject of treason, that the crime cannot be made out by mere words, but must be evinced by acts, deeds, or writings. That this is unquestionably the law, you have the direct authority of the legislature delivered to you by the words of the act passed in the reign of his present majesty, the 36 Geo. 3, cap. 7, and upon which are founded two counts of this indictment. It is there said, that the treason must be made out by *printing or writing, or any other overt-act or deed*. You see, therefore, from this act, that the treason charged, or whatever is alleged as treason, is not allowed by law to be made out by any declaration that came from the mouth of the particular person charged;—I do not mean when I make this observation, that the testimony of witnesses is not to be received; if that had been my opinion, I should long ago have been called upon to have objected to his lordship, and to have insisted that a vast deal of what was about to be laid before the jury could not consistently with the rules of law be received. I do not mean to say the testimony of witnesses is not to be received; but, I mean to say, that it is not upon the parole testimony of witnesses only that a man is to be convicted; his guilt must be made out by *writing or by deed*, for it is upon that species of evidence alone that the law will, in cases of this sort, allow a man to be convicted of this crime. Why, then, you will ask me, does the law allow the parole testimony of witnesses to be received, if upon such testimony he cannot be convicted? The law allows the parole testimony of witnesses, not for the purpose of making out the guilt of the offender, but for the purpose of explaining deeds, transactions in themselves inexplicable, not as proof itself, but as a commentary on the actual proof.

I am about to advert to a book which I shall probably be told is of no authority in this country; when I talk of authority, I mean not that sort of book one can cite in a court of justice with a view of binding the learned judges who are to decide upon points of law, according to the authorities of learned English law-writers, but I cite it because this learned person has expressed my opinion upon

the subject better than I can find words to do it myself; and I may say, without offence to any one, he has expressed the opinion of an English lawyer *as clearly and accurately as any judge can express it*, AND MORE ABLY THAN IT HAS HITHERTO BEEN DONE BY ANY ONE. The book I allude to is the inestimable work of the president Montesquieu. Speaking of treason, he says,* "Nothing renders the crime of high treason more arbitrary than declaring people guilty of it for indiscreet speeches. Speech is so subject to misinterpretation, there is so great a difference between indiscretion and malice, and there is often so little of the latter in the freedom of expression, that the law can hardly subject people to a capital punishment for words, unless it expressly declares what words they are." He continues, "Words do not constitute an overt-act." Nothing can so clearly show the wisdom of the law of England upon this point, as that a foreign writer, not influenced by any knowledge of our municipal rules, but pursuing abstract truth, should declare that to be right on the universal principles of wisdom and justice which these laws have established. "They remain only in idea when considered by themselves; they have generally no determinate signification, for this depends upon the tone in which they are uttered. It frequently happens, that in repeating the same words they have not the same signification; this depends on their connection with other things; and sometimes more is meant by silence than by any expression whatever, since there can be nothing so equivocal and ambiguous. If this is so, how is it possible to convert words into a crime of high treason; wherever this law is established, there is an end not only of liberty, but even of its very shadow." Gentlemen, there is no such law established in this country, and liberty exists in as great, if not in greater perfection here, than it exists in any other country upon the face of the earth.

In another passage he says, "Overt-acts happen not every day; they are exposed to the eye of the public, and a false charge, with regard to matters of fact, may be easily detected; words carried into action assume the nature of that action. Thus a man who goes into a public market-place to incite the subject to revolt, incurs the guilt of high treason, because the words are joined to the action and partake of its nature. It is not the words that are punished, but an action in which the words are employed; they do not become criminal but when they are joined to a criminal action. Every thing is confounded if words are construed into a capital crime."

Gentlemen, it is impossible that the idea of an English lawyer can be better expressed than it is here; permit me to show you how extremely material this observation is; it says, if any fact be proved as evidence of the

intention of the mind of the person from whom that fact proceeded; as if, for instance, it should be shown, that a man went into a public market, and there did some act which amounted to high treason, what would be the situation of the accused? that if he were charged wrongfully with it he might call five hundred witnesses who were all in the market, for the purpose of showing that did not pass which all the witnesses had stated did pass. What is the situation of a man who, instead of being convicted upon this species of overt-act which occurs but seldom and is capable of contradiction, is to be brought to his trial, and charged and convicted, not by acts which he can contradict, but brought to trial and punishment upon proof of conversations only in a private room, proved by the testimony of persons who are so infamous that no human being would give them credence?—In such a case there is an end of liberty; indeed, if upon testimony like this a man is to be convicted of treason, do not tell me the law of treason is defined and rendered certain; do not tell me there is no constructive treason in this country; it is in vain to tell me, that the law of treason is fixed whilst the rules of evidence are so unfixed, that whilst the law says you can convict only on overt-acts, the existence of which may be ascertained or denied by credible proof, a man may be convicted not by overt-acts, but merely upon the parole testimony of witnesses.

I am aware, whilst I am arguing thus, of what has been said upon this subject, that a meeting is an overt act. As, in the language of the book I have read, if I go to a market-place to incite the people to rise, that is an overt act, and it may be said thus, colonel Despard's going to meetings—for I cannot deny that he attended one or two,—I shall explain satisfactorily, by-and-by—why he was there—is an overt act, and then compiling that circumstance with any declaration that he made use of there, the crime of treason is complete. But, with great submission to the attorney-general, this is entirely begging the question; for, before they can make out that attending a meeting is an overt act to convict him of high treason, they must prove that it was a *treasonable* meeting which he attended; attending a meeting is an equivocal act; it may be innocent or it may be guilty; something must be added to show that such an attendance was an overt act of treason. You will presently find that you have no evidence from which a jury can safely conclude, that any meeting which colonel Despard ever attended, was a meeting for treasonable purposes? if that be so, his going to them cannot be considered as overt acts.

But it may be said there is a printed paper found in this case, and the attorney-general triumphantly challenged me to put an innocent interpretation on it. I think, if I were driven to it, I could perfectly explain this

* Spirit of Laws, book XII, ch. 12.

paper, but I do not choose to explain things that I am not called upon to explain; it is too late in the day, and we have had too much labour already in the course of it, to be disposed to discuss what we are not called upon to defend. I do not care whether that paper be treasonable or not; *is it connected with colonel Despard, except by the testimony of Francis, one of the most infamous men alive?* there is not an atom of evidence in the cause, except the evidence of Francis, to make that paper, whatever be the contents of it, affect the gentleman who now stands at the bar. I say, therefore, upon this subject, that the only evidence is, that he has attended one or two meetings, and there is only satisfactory evidence that he attended one meeting—namely, the meeting at which he was apprehended; for his attendance upon every other meeting is proved only by witnesses whose testimony I shall comment upon presently; whose testimony I undertake to satisfy you, you must dismiss from your consideration, it being, as I will show you, wholly unconfirmed; and there is not a man in this court safe for his life, his honour, or his property, if a conviction is obtained on such testimony not confirmed.

Gentlemen, let us contrast this case with other cases that have happened, let us see what evidence has been produced upon other occasions, and then judge, from a comparative view, whether this case is not mainly defective in necessary legal proof. I appeal to my lord, rather than to you, on this point; for it cannot be supposed that you are deeply read in trials for treason; but his lordship knows all the cases that have been decided upon this subject; and I venture boldly to state to you, in his presence, that in no case since the Revolution has there been a conviction on such evidence as has this day been adduced. In Layer's case, which most resembles the present, what was done? did they content themselves with calling a man of the name of Leach, a person of the description of some we have had to-day, to swear, that Layer attended meetings, and contrived at those meetings to overturn the constitution of the country? no such thing; they proved that arms were found; they proved, that in the hand-writing of Layer there was a plan in which all who joined in that conspiracy engaged to act for the purpose of overturning the constitution of the country. They had overt acts there with a vengeance; arms were found; that is a circumstance which wants no explanation, but is such strong indicia of guilt, that it calls upon the prisoner to give a satisfactory explanation how these arms came into his hands, or that one circumstance would be sufficient to decide his condemnation. I appeal to the noble judge, whether any other case has occurred from the time of the Revolution down to the present time; for I speak of no cases before the Revolution, inasmuch as I can never consider the constitution as settled before that time, or any thing as worthy to be called authority, when the judges,

from whom they proceeded, were not what they are now; they were then objects of suspicion, now of respect and veneration; they were not then that which they are now, thanks to the family now upon the throne, independent. I have selected, therefore, those precedents which have occurred since the era in which those learned persons were placed in a situation in which they can, without any bias, discharge their important function; and I say with confidence, that no one solitary instance will be found,—I challenge the solicitor general to point out a single instance from the time I have mentioned,—in which a man has been convicted of the crime of high treason, merely by proving him at a meeting, without proving that any acts have been done, either at that meeting or elsewhere, which manifest a traitorous intention. I do not mean to say, that the traitorous intention must be followed by any act in pursuance of it to constitute treason: the intention to act is sufficient, but that intention must be proved by some writing, or some clear, unequivocal preparatory step. The jury will not believe the intention existed, unless they see some means provided for carrying it into execution. This observation applies with great force to the present case. I can conceive a case where treason shall be complete, and yet it shall be difficult to find evidence of preparation: where men have just begun to plot and contrive a treason, which they know from its nature cannot be speedily executed, which must take time to ripen before it could be carried into effect; in that sort of case one cannot expect evidence of preparation, because the season is not arrived when preparation is to begin.

According to the evidence you have before you to-day, this was not that inchoate species of treason I have been describing, where there was yet a lapse of time before any preparation was to take place; but in fact, the account the witnesses have given, is, that the treason was not only conceived, but the traitorous scheme was completely planned, and on the very eve of being carried into execution. Indeed, the day fixed on for the achievement of a most important part of their object, is long since passed. The Tower was to be seized on the 6th of September, a fortress so strong and commanding, that colonel Despard is stated by one of these miscreants to have said, he could burn the town from its guns; and yet no evidence is offered to show that any one step was taken in furtherance of this plan. No attempt is proved to have been made, nor any reason given why the projected attempt was not made.

Gentlemen, I put it to you, if any man alive could believe this; instead of being sworn to by the description of witnesses you have heard to-day, it was attested by men of the highest credit, would you not pause and say, "some strange delusion must have got hold of these men's minds; what you have stated is so contrary to every principle of probability,

that we can never be induced to believe it; our own senses negative the evidence; events must be preceded by adequate causes; the immediate occurrence of wonderful events are here said to have been contemplated, and not the least cause for them is shown?"—

Gentlemen, I have shown you there were no deeds of preparation: I have shown there are no writings, the possession or knowledge of which is brought home to colonel Despard. But it may be said, colonel Despard was so cautious and wary a man, that he would take care that that species of evidence should not be found upon his person. Those who are to support a prosecution of this sort, must not be inconsistent. Colonel Despard cannot be represented in the same breath, as a cautious and an incautious man; it is impossible that the attorney-general could open this as a scheme likely to be attended with success. What does the very undertaking then prove? Wild and extravagant folly, wholly inconsistent with any thing like caution. But let us watch him in the progress of the plan. The witnesses say, that this cautious man drew up writings and plans, though none were found upon him; and that he was so extremely incautious, that he was talking to every man he happened to light upon in his road, upon this very scheme, and disclosing every secret he had upon the subject, not only to those who he did not know would concur in his measures, but to those who expressed their decided disapprobation of them. How can you reconcile this conduct, and the existence of treasonable plans drawn by him, with the circumstance that not one treasonable paper should ever be found upon the person of this gentleman, or in any plan immediately and necessarily connected with him?

Gentlemen, I come now to a topic, which, I think, forms the most important of any with which I shall have to trouble you, and that is, that it is a rule of evidence, not merely applicable to the case of treason, but to every other crime upon which you, in a criminal court of justice, can be called upon to decide, that the case shall be made out by credible witnesses. It is necessary that I should explain my meaning upon this subject. I know it may be put to me, do you mean to say, that such witnesses as accomplices are not to be called? I mean to say no such thing. I say, accomplices may be called: I say, credit may be given them to a certain extent; and I will state the line which I think bounds the extent of their credit. An accomplice should be given credit to for an explanation of a transaction which has been shown to be criminal by *other witnesses*. But his evidence ought not to be regarded, unless a complete crime is proved by other witnesses. Why then, you will ask me, is an accomplice to be received at all? I can easily tell you, that the testimony of an accomplice is to be received for the purpose of satisfying a jury, who, perhaps would not be disposed to go the length of find-

ing the party guilty, if some of the circumstances that would be sufficient to make out a complete case of guilt, have not that sort of explanation which an accomplice is capable of giving them. If you go farther than this, and allow an accomplice to prove a case of guilt, which is, independent of the evidence of an accomplice, a perfectly innocent case, you put every man in the hands of an accomplice, and enable him, at any time, to destroy most effectually the honour, character, and life of any one person, whose destruction he happens to feel an interest in working.

The attorney-general has stated a case to me, for the illustration of this doctrine. Suppose, says he, one had distinct evidence that a house had been robbed, that two persons who had stolen the goods were seen in company with a silversmith, and that they were talking together upon the circumstances of the robbery, and then one of these persons should be called as an accessory, who should prove the burglary against the three. I should think that an extremely suspicious case, but I should doubt whether a jury would be disposed to convict, unless you could trace some part of the property into the hands of the silversmith; and then, with deference to the attorney-general, instead of proving the case of burglary, it would rather prove the silversmith accessory to the offence, than a principal felon; and to prove him such an accomplice, there are indicia of guilt, independent of the testimony of the accomplice. The circumstance of his conversing with them, respecting an article which he is supposed to deal in, would require explanation from him. Besides, the attorney-general supposes the burglary to be distinctly proved by other witnesses.

But I will put another case. Suppose it happened to any one of you, to have the misfortune to be seen travelling along a road, at the time when a murder was committed by two persons; those two persons are observed to go in that direction of the road in which you are travelling. They separate from each other, and one of them joins you on the road, and is afterwards taken. Upon his apprehension, he offers to turn king's evidence, as such a witness is called. To save himself in this manner, he must make a charge against somebody, and that somebody must be one who can be apprehended, and with respect to whom his charge is capable of confirmation. He will not accuse his accomplice, because he knowing his guilt, will avoid apprehension by flight or concealment of his person; but he will allege that you are the partner of his guilt, knowing that you, not conscious of your situation, will be easily taken, and that his story respecting you, will be confirmed. Here then is a case that shows how compatible with perfect innocence are, circumstances of extreme suspicion a case that shows that the confirmation that must be required to give credence to an accomplice, must be in some fact that raises a positive inference of unequi-

vocal guilt. In this case it is clear you would be perfectly innocent, and yet the accomplice would have confirmation equally as strong as any thing proved to-night; that you were seen passing along the road at the time when the murder was committed, is surely as strong as that you happened to be in the same room in a public house, with a man who had a treasonable card in his pocket. That is the very reason why the accomplice would describe you as being the person who was concerned with him in the commission of the murder. It would not answer his purpose, to name an indifferent person who had not been near the spot, because he would not entitle himself to that discharge, which he is entitled to upon telling that sort of story, which having the appearance of truth about it, might induce a jury to believe that what he tells is true; it is necessary for him to fasten on some circumstance, to give a degree of probability to it; but if this circumstance is sufficient to convict, where is our security? Because there is not one of us who may not be placed in the situation I am describing, and be innocently condemned to an ignominious death, upon such testimony.

What then do I require? Rules are not made so much for the punishing of those who are suspected of guilt, as for the purpose of protecting those known to be innocent. Let us so act in courts of justice, as that, whether we convict the guilty or not, we shall be secure to save the innocent, for it is the maxim of the law, "that it is better that ninety-nine guilty persons escape, than one innocent person should suffer." This being the view of the law, let us see how this rule can be safely applied. I say it can be safely applied only in this way,—that the testimony of an accomplice shall not be let in, but as explanatory of the guilt, after a clear case of guilt has been established by the evidence of other persons, and if this is the rule, see how it bears upon the case, before you let me desire you to review your notes, to ask yourselves whether one tittle of evidence to affect the gentleman who now stands before you, has been proved in this case, except by the evidence of accomplices. If I do not extremely deceive myself, unless his being present at the meeting at the Oakley Arms is sufficient to prove he is guilty, there is no other circumstance but what comes from accomplices. If this be so, it is not the cause of colonel Despard I am pleading before you; it is the cause of every Englishman; it is the cause of the English law; it is the cause of English liberty; for English liberty consists, after all, in protection against foul charges in courts of justice. If that which I state is a rule, essential to the protection of an innocent man who may be brought to the bar, I am not urging a rule for the sake of this gentleman, but one of which, any one of you, or the most eminent person in court, may one day need the protection. Gentlemen, it is one of the advan-

tages of that tribunal which I have now the honour of addressing, that you are, after discharging the important function now cast upon you, to be reduced again to the common situation of subjects of this country, and be subjected to those casualties to which all are liable. Our security is, that being tried by men of the same condition with ourselves, they cannot fail to have that proper sympathy, which will make them feel the necessity of acting upon a rule well calculated for the protection of innocence, when it happens to be invaded by the attempts of infamous and designing men.

I may however be told, that though it must be admitted to me—for it certainly must—that there are only four persons, namely, Windsor, Francis, Blades, and Emblin, who at all affect colonel Despard in this transaction; and although not one of these persons, standing alone, would be entitled to credit, yet the concurrent testimony of these four persons, establishes a case, which the individual testimony of each standing separately, could not accomplish. I should feel, certainly, the strength of the observations which the solicitor-general will presently make upon the effect of concurrent testimony in many cases, but it appears to me, that this is one of the species of cases to which observations of that sort cannot be applied. I am fully aware, that if witnesses, who are brought from distant quarters, tell a story in which they all agree, it carries with it a striking appearance of truth, because it is scarcely possible that a coincidence in all respects in the circumstances could exist, unless that story were true.

But, gentlemen, this observation which has been constantly made upon concurrent testimony, loses all its effect when it is applied to the case of conspiracy; for if men conspire to fasten a crime about the neck of others, they will take care that all their stories shall agree. The moment, therefore, it is established that there was a conspiracy, the inference arising from correspondence and testimony is refuted, for it is the nature of a conspiracy, that the testimony should be consistent. If any three or four persons were to set about to charge any offence against any particular man, they would take pains to concert together, that the story each tells should correspond with that of the other. Then I put the question, do you believe there exists a conspiracy? for, if you do, if the story is told by a hundred, it is the same thing as if told by one. For by putting one broken reed to another, you do not give any greater strength by the union. That the transactions in which those witnesses have been embarked, is an infamous transaction—show there is ground to presume they have concerted together for the purpose of charging an offence against colonel Despard, which belongs wholly to themselves, and there is an end of all their evidence. In the sequel of what I have to say, I think I shall prove that such a conspiracy does exist in this case.

Gentlemen, I come now to that which appears to me to be a ground which is decisive of the present case. We have heard witness after witness, telling a tale which really freezes my blood, and so benumbs the faculties of my mind, that I am deprived of the power of rescuing my client from the dangers with which they have surrounded him. In such a state, and when my own strength deserts me, it is a consolation that I can pray in aid for my client, the strength and authority of the noble and learned judge.

It was said by his lordship, in his address to the grand jury the other day, that it ought not to be said, that because a story was improbable it was to be rejected as unworthy of credit, but that they were to require stronger evidence than they would think necessary to satisfy them of the truth of it if it had been consistent with probability. This was said to the grand jury who were not to try, but to consider merely whether there was ground enough to put these men upon trial; but even to them, says the judge, if the story be improbable, do not reject it immediately, but be more cautious about the proof by which it is to be established; and if its certainty is equal to counteract the inference arising from its improbability, find your bill, and put the men on their trial. If this caution was necessary for a grand jury, who are only to put them in a state of accusation, how much more necessary is it for you, who are finally to decide on their fate?—No man has greater respect for the noble and learned judge than I have, and that observation raised and increased the respect I had for him, because it is a wise and just comment upon the inviolably sacred rules of evidence. I have the authority of this noble person for saying, that if this be an improbable story, it requires more cogent evidence than you would require for the purpose of establishing a case that occurs in every day's experience. Is it a probable, or an improbable case? and if it is an improbable case, have you that sort of evidence which would be sufficient to make you believe that, which the experience of every day shows you is unlikely ever to happen? That it is an improbable case, no man can hesitate about for a moment. What is it? Fourteen or fifteen persons assemble together at a common tap-house, with no other fire-arms than tobacco pipes, form a conspiracy to overturn a government resting upon the shoulders, and supported by the unshaken loyalty, of almost as many millions. What are the persons who have undertaken to do this? Men of the lowest situation in society. Have they any foreign connexion? Is any person on the continent to lend them aid or money? There is not an atom of evidence of it. How are they to do it then? Does it appear that this conspiracy of theirs, by which such a mighty work is to be accomplished, has extended to any distance into the country, and that they are to expect the moment they

have struck the blow, which they are to strike without any means, in London, any assistance from the country, without which it was utterly impossible to carry such a plan into execution? I am happy to say, there is no proof that they could have entertained an hope of any such co-operation. These witnesses, for the purpose of giving credibility to their story, have said that such assistance was talked of. It is a case, in which, according to them, every thing that was impossible was talked of, but nothing done. But is it true? I say it is not; and say it upon that which has appeared in this cause. If it were true that colonel Despard said London would not do for the organization of the men, but that the country was organized from one end to the other; how happens it to day, after so many hours exhausted, that not the least proof has been laid before you of any other conspiracy in any other part of the country, or of any vestige of this having extended itself into the country? You hear but of this miserable conspiracy, concerted at a miserable pot-house in London, for the purpose of carrying this miserable plot into execution. The imagination of Cervantes was lame and futile, compared to the projectors of this scheme. He never could work himself up to conceive any adventure for the knight of *La Mancha*, to be compared with that which these heroes at the Oakley Arms were about to attempt to carry into execution in this country.

Another thing,—this plan was ripe for execution, and part of it ought to have been executed, but no reason had been given why it was not executed. With what means was it to be executed? My friend, who sits by me, suggests, with the enormous sum of fifteen shillings and sixpence in the Treasury. By what means is this mighty scheme to be carried into execution? by what arms? not a pike, gun, sword, pistol. No one offensive weapon has been found in any one place. By whom was it to be done? Why, you have no evidence of even forty men being ready at any one period. What were they to accomplish? The Tower was to be taken, although guarded with one battalion of guards, the mail coaches were to be stopped; the king was to be attacked, while attended by the horse guards, in greater numbers than all the conspirators, as they have been represented to you, not one of them, I beg to say, for the honour of that corps, having been proved to be corrupted: for the utmost extent to which corruption had gone, was through some few companies of the foot guards not one of the horse guards was ever corrupted; yet with these forty or fifty men of buckram, the Tower was to be taken, the Bank was to be seized, the India-house was to be overturned, the king was to be seized in the midst of his guards as he was going to the House of Lords, and the two Houses of Parliament, taken most complete possession of. One cannot make it more extravagant, than in the

way colonel Despard is represented by one of the witnesses to have acted ; that when one man, not so drunk as the rest, suggested a difficulty, he should say, if there is no one among this tattered regiment dare attack the king, guarded as he will be, I will break through the horse and foot guards and do it with my own single hand. It is quite as probable this gentleman should attempt to do it with his own hands, as that he should attempt to do it with the assistance of those persons.

I think I have demonstrated, that a more improbable scheme than this never existed. Upon what foundations do governments stand? Is the government of a great country, such as I have been describing, resting upon foundations, which, I trust, for the benefit of us all, will last for ever, are we to be gravely told, and in a court of justice, that we are to be bereft of all these advantages, from a miserable conspiracy formed at a low pot-house, having no other means of carrying it into execution? You are not to sit in that box and conjecture what there might be connected with this. You are to take the case as it is proved by those, who have had the means of developing this conspiracy to the bottom, and who have not traced one single communication with any man, who could be supposed to lend any aid and assistance to carry such a quixotic scheme into execution. I state the utmost extent of it, when I state forty or fifty as being the utmost number of persons connected, in any way, that ever assembled in connection, for carrying this into execution. Then are you to be content with evidence, falling infinitely short of that degree of evidence that has been acted upon in other cases, in a case so improbable, and which, to be believed must be substantiated by the most irrefragable proof? I have stated what has appeared to be the evidence in other cases, and you will see how deficient the present evidence is, inasmuch as in the cases I refer to, the treason has been proved by things that cannot lie, whereas all the treason in this case has been proved by these four men, who, from what they have confessed to-day, are all wholly unworthy of any belief.

Gentlemen, perhaps you may ask, do you mean to contend, that no traitorous scheme whatever existed? I do not mean to contend for any such thing; I am firmly persuaded that a traitorous scheme did exist; but that merely is not the question you are to try. The question to be tried by you is—Is the man at the bar the traitor? is it a treason of which he was the origin? or has he ever concurred in it? I am firmly persuaded, that after a few observations you will agree with me, it is impossible to conceive that this was a treason, in which a man of his description could for a moment concur. I say, I believe a traitorous conspiracy did exist; but I am firmly persuaded, that the extent to which it was carried, was far short of what has been re-

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presented to-day. I have no doubt that some men have conceived the detestable design of seducing the army from their allegiance to the king, and after they had corrupted them, of making use of them for some wicked purpose or other; but I am firmly persuaded those persons have never gone the length of determining in what manner they should employ the force thus acquired. But the moment they began the plan of seduction, they found that the integrity of the soldiers opposed an insurmountable barrier to their wickedness, and that it was necessary immediately to devise some means of securing themselves from the justly merited consequences of their crime.

There was but one way in which, by any possibility, they could ever hope to retreat from their danger, and Windsor, the witness, pointed out what that way was. The attorney-general attributed his conduct to motives of contrition; but I have too good an opinion of the attorney-general's sense, to think he supposed that it was contrition that wrought the change in Windsor's conduct. I believe he only abjured the treason, when he found it was impracticable, and considered that the only way of securing himself was by charging others. What had these persons to do then? to do that which Windsor did, notwithstanding he had gone to Mr. Bownas and represented himself as being weary of the treason in which he had engaged,—still to attend the meetings, and still to do that, which nothing but the most infamous man alive could do,—although he found the treason impracticable, although he knew the consequences which must attend it, although he pretended to affect to repent the share he had in it, to seduce other persons into it for the purpose of betraying them. I cannot conceive a more horrid character, than the man to whom such a conduct can be imputed. I know of but one being that I can assimilate to such a character—an infernal being, in whom are embodied all the vices that war against the happiness and condition of man; and yet it is upon the credit of such a man, that you are to say, this gentleman, whom I will prove to be a man of character, this gentleman, whom the attorney-general says you must presume innocent till proved guilty, is guilty of a crime, which forfeits his honour and his property, and delivers over his life to the most dreadful sentence the law of this country allows to be pronounced.

If there be treason, who are the traitors? There is evidence arising from the nature of the case, which decides this point; it depends not upon the veracity of witnesses, but on evidence of a description which cannot deceive you; the treason betrays its base original; the treason shows that it has been hatched by men, whose untutored minds are incapable of embracing an extended scheme of action; who are ignorant of every thing beyond the narrow sphere of their own

former duties; who imagine that all that is necessary to form an army, is to get men together, and put arms in their hands; who know nothing of the arrangement necessary to give effect to military force, or of the supply of provisions and ammunition that they must have to be enabled to keep together, and to execute the purposes of their union, and therefore make no provision of either; who think that, because the small circle of their drunken associates have persuaded themselves they ought to obtain some change in their condition, all the guards, the whole army, and a great majority of the nation, entertained the same sentiments, and are ready to co-operate in their plans. Whether this ridiculous scheme was likely to be undertaken by ignorant men who did not know the obstacles they had to surmount, or was likely to be undertaken by colonel Despard, who, I will show possessed all that knowledge which would show him the impracticability of such an undertaking, you will judge.

The attorney-general felt, that it was necessary for him to account, how such a man as colonel Despard could have connected himself with so wild and visionary a project, and he thinks he does account for it by telling you, that there are enthusiasts in politics as well as in religion, and the moment a man becomes an enthusiast, there is an end of judgment; but that is begging the question. Before you can build any thing upon the enthusiasm of colonel Despard, it must be proved that he is an enthusiast. What evidence have you to night, but the black and despicable testimony I have spoken of, which shows that any thing like enthusiasm has existed in his mind? any thing like that sort of spirit, which would induce him to overleap all rational consideration, and to attempt such an undertaking, as none but fools and madmen would undertake?

I will give you evidence upon this subject; I will show you what colonel Despard is, and ask you, after having heard it, whether, supposing him to be as malignant against this country as I hope he is firmly attached to it,—for though he has been a disappointed man, yet God forbid that disappointment should be supposed to engender treason,—whether, unless he is bereft of his reason, unless he is in that situation, in which according to the laws of man he is not to answer at this bar for any action, he could have engaged in, any conspiracy of this sort? I will prove that he was a soldier from his youth; not a soldier whose only knowledge of the duty of a soldier is confined to what he has learnt on the parade, but I will prove he has been a man accustomed to form extensive schemes both of conquest and defence; I will prove him to be a man, who has been used to estimate all those resources necessary for accomplishing any of those schemes: I will prove he has been a man who has been placed in situations, in which it was neces-

sary for him to calculate upon the chances of success and miscarriage, that must occur on any military operation. Is it likely that rash enthusiast would be so employed? or have such kind of services any tendency to tincture the mind with enthusiasm? Do they not rather sharpen and strengthen the judgment, and cool and regulate the passions? Is he, who has been accustomed to conduct and plan expeditions, the judiciousness of which has been proved by their success, or men, altogether unused to think on such subjects, most likely to have formed a design, which every body must condemn as impracticable and ridiculous? The thing speaks for itself; it requires neither comment nor evidence.

If I am allowed to go into evidence, I shall show the particular services in which he has been engaged; I shall show that he, who to-night has been represented as arming his fellow subjects against his country, has spent the best years of his life in the service of that country, in the worst climates, in the midst of every species of hardship, that he has been not used merely to obey, but accompanied by one whom I shall call, whose name does honour to this country, Lord Nelson; that, in conjunction with that noble person, he led on the arms of his country and accomplished an important victory; that this presumptuous and ignorant man was intrusted by the government of Jamaica to fortify that island, which proves how complete a knowledge he has of that profession of which he is a member; that he executed these services in such a manner, as to obtain for them the thanks of his sovereign and the house of assembly of Jamaica.

Gentlemen, you will ask me, then, how happens it that this gentleman so circumstanced, was found in the situation in which it was impossible for me to deny colonel Despard was found, attending one of these meetings? I am not afraid to encounter that, I feel it the only thing that presses upon me, but I feel that though exhausted with fatigue, I have strength enough to explain that transaction. It has so happened that colonel Despard has been from particular connexions, that he formed some few years ago, suspected of being concerned with a traitorous conspiracy then supposed to exist. It is not necessary that I should now say a word whether that traitorous conspiracy did exist or did not; the consequence of that connexion was, that colonel Despard, after having performed the services for his country that I have stated, was confined for three years in one of its prisons.*

* Concerning the imprisonment of colonel Despard, in the House of Correction, Cold Bath Fields, see the debates in the House of Commons on December 21st and 26th, 1798, 34 New Parl. Hist. p. 111, 126, the debate in the House of Lords January 4th 1799, 34 New Parl. Hist. p. 169 and colonel Despard's Peti-

and after he was liberated from that prison, was degraded from the rank he had acquired in the army, not rank acquired as rank sometimes is acquired, but acquired by honourably serving in a dangerous campaign. This circumstance was perfectly well known throughout the country; colonel Despard was therefore just the very man that conspirators would lay hold of who were disposed to get rid of a treason which had attached upon themselves, and throw it upon the shoulders of another. It would not do for the witnesses who have been called to-day, to have said Macnamara, Broughton, and the other persons, whose names nobody knows any thing about, have engaged in a conspiracy to overturn the government; government would say at once this is all incredible; it cannot be stated to a jury; you must bring us forward some leading character that was to carry this conspiracy into execution, or we cannot institute a prosecution. These wicked persons, therefore, knew it was necessary to fasten upon better persons than themselves before they could make their tale credible. For this purpose they invited him to their meetings. Upon what pretence could they ask him to go there? a most natural one, upon pretence that they felt themselves aggrieved by some treatment that they experienced as soldiers; and knowing that he was an ill-used soldier, and expecting he would have a common feeling with them, they requested he would advise them as to the mode of obtaining redress. He did conceive himself an injured man, and was therefore induced by that sympathy which men feel for those who profess to endure the same evils with themselves, to give them his assistance. He therefore attended a meeting, which it is material to state, was an open one, not conceiving that any thing was meant to be transacted there but what was perfectly consonant to law and justice. It does not follow that, because he attended that meeting, he was a traitor; every person that attended that meeting was not a traitor; thirty were taken; fifteen discharged; two of the persons that were known to attend there, were not taken up, one person who did attend there, near whose chair these very oaths were found, was found to be an innocent man, and discharged; therefore, we have the authority of government that it does not follow that, because a man attended

tion to the House of Commons, p. 515 of the same volume. His confinement was also adverted to in other debates about the same period.

On the 25th of June 1798 a motion was made in the Court of King's Bench for the discharge of colonel Despard, on account of the insufficiency of the warrant of commitment, it being for *treasonable practices* generally, without specifying the particular nature of them. The prisoner was however remanded.—*Vide the King against Despard*, 7. T. B. 736.

that meeting, he therefore was a traitor. Why, then, is colonel Despard to be said to be a traitor? for no other reason than because he was at the meeting; that is the extent to which the evidence goes against colonel Despard, as applicable to the meeting at the Oakley Arms; and then the guilt of treason depends entirely upon that species of testimony, upon which I have observed at so much length.

I have mentioned that he was suspected of treason from a connexion he formed in the year 1798. I have to state to you also, that though he was suspected, it turned out that there was no foundation for that suspicion; though he was detained in prison for three years, he was afterwards discharged without the crown finding even evidence enough to lay before a grand jury, much less to convict him if they had put him upon his trial. I have a right, therefore, to presume from this, that he was wholly innocent. I beg here not to be misunderstood, I do not mean to say that those who passed the act of indemnity did wrong; I think the government were entitled to the protection of the act. I am not, therefore, in the observation I am about to make, meaning at all to insinuate, that those who passed the act of indemnity, which prevented actions from being brought against ministers for confining persons without bringing them to trial, did any thing that was wrong; but I have a right to say, that though they were entitled to protection,—and ministers must have protection, when they act for the public good, however much it may press upon the convenience of individuals, because the interest of individuals must give way to the public interest;—but though I am willing to concede this, and though I think the measure may have been right; and should, had I had the honour then of being in a situation which would have given me a power of concurring in it, have concurred in this measure, yet it prevented colonel Despard from doing that which otherwise he would have done, namely, have brought that species of action which would have enabled him to vindicate to the whole world his character from these accusations.

I say, therefore, that colonel Despard, in the year 1801, was discharged from the confinement under which he had laboured, as a person on whose character there was no spot, as a person in whose conduct, although it had been sifted to the bottom, no fault could by any possibility be found. What inference do I draw from this? Is it probable that colonel Despard, whom I assume from this circumstance to be innocent in the year 1798, when the state of things both abroad and at home held out an encouragement to the crime, was wholly free from guilt, should in 1802, without any inducement whatever to engage in any such undertaking, without any hope of its success, associate himself with men, whom he must know were destitute of all the means

of accomplishing any such end, to destroy the king, and overturn the constitution.

I think you will agree with me, it is not very probable that this should be the case. In the year 1798, what some were pleased to call freedom shone out in full blaze in France. All who were on that side the water, and many who were on this, at that time were bent on extending the flame to this country. In 1802 things were altered, the very embers from which this flame proceeded were wholly extinguished; France had within her own territories renounced the doctrine of the indefinite rights of man, and was no longer desirous that they should be inculcated in other countries; she had gone the same round which all other countries have gone who have factiously overturned a legitimate government, rioting for a time in all the excesses of anarchy and disorder, and then seeking a shelter from those intolerable evils under a government more severe than that from which they first broke loose.

Gentlemen, I have made all the general observations which I think it necessary to make upon this case; but, before I sit down, I think it necessary to say a little upon the evidence which has been given. I have already observed to you, that it appears to me, all the different persons who have been examined to-day, who prove any thing like a conspiracy on the part of colonel Despard, are certainly witnesses to whom it will be utterly impossible for you to give any thing like credit. I will mention all the different names of those persons whom I mean to class under that description. Before I sit down, I wish to read some part of the testimony these men have given, and particularly those who bring the case most home to colonel Despard, and ask you whether it is possible, even in the most trifling case, much less such a one as this, to say you can give them the least credit.

The principal person who has been examined is a man of the name of Blades; it is enough almost to say that he undoubtedly is an accomplice; it is enough to say that Blades has taken one of those oaths, which the attorney general defied me to put an innocent construction upon, which is so baneful, that colonel Despard is supposed, by being in the same room with the paper on which it was printed, to be contaminated.

Gentlemen, I do not mean to argue before you to-day, that because a man has taken one of those oaths, that, therefore, he is to be considered as a perjured man, in coming to disclose that which he has been sworn to conceal; God forbid I should ever be found propagating such a doctrine; it would be most dangerous, most mischievous, and most false; such an oath unquestionably is not binding upon any man; if a man takes an oath to commit a crime, that oath undoubtedly is of no force whatever; God forbid it should be, for it would give stability to the most wicked conspiracy. It is impossible that it can have

any force. He insults and abuses the Divine truth who appeals to it to sanction crime, and by the invocation brings on his impious head the curse of Heaven to blast the wicked design of which he thus pledges himself to the execution. Why then do I advert to that circumstance in the evidence of a man who is a witness here? I do not blame him for breaking the oath, but I charge him with blasphemy in taking it. And I ask you whether a man who has so abused the solemnity of an oath is afterwards to be believed, recollecting at the same time that he has already falsified one oath by another; for as a soldier he has sworn to be true to his sovereign, and by this oath he has pledged himself to betray him.

The next person that comes, who says any thing that is material, is Windsor; I have said enough respecting Windsor; he has taken the oath, and he appears to be an accomplice, but an accomplice of the worst sort—an accomplice, who, after he had repented of his crime, still goes on, not for the purpose of discovery, but of betraying others into the situation from which he wished to relieve himself.

Then I come to William Francis, the only person who has proved any thing like treason against colonel Despard, the only man who has connected colonel Despard with this oath; for I am sure it will not be argued that because there were cards in the room where colonel Despard was, that that circumstance alone makes their contents evidence against colonel Despard. The only person, therefore, who brings home this card to colonel Despard is the witness of the name of Francis. It is material also to observe, that though this conspiracy existed from the month of March to November, at which time it was to be completed, Francis is the only man who brings colonel Despard at all within the pale of it before the 13th of November; they must then have found out that nothing could be done, and, therefore could only want colonel Despard to deliver him up as a victim, as the means of purchasing their own indemnity.

Let us see whether his story is not so irrational and inconsistent with itself, as that it is impossible for any man to believe it. What is the account he gives? He tells you he has a brother, who unfortunately is confined in prison, one of the persons engaged in this conspiracy, and against whom he has been giving evidence to-day to affect the life of that brother. I confess myself, much as I respect courts of justice, if a brother of mine were in the situation in which that man's brother is, the rack, or the torture, engines and instruments which are not allowed by the law of this country, never should extort from my mind a secret to be made use of against the person standing in that near relation. The tendency of his testimony is not merely to ruin this gentleman, an utter stranger, but one so nearly connected with him as his brother. But what is the account he gives?

He feels that it is necessary, to give him credit in a court of justice, that he should not admit he had taken the oath of secrecy, therefore he distinctly tells you he never took this oath of secrecy, and he goes the length of telling you, that he avowed to colonel Despard, when pressing him to take it, that he was not a man of his principles, and did not go along with them in their scheme, and would not co-operate with them. Is it to be believed that any one but a madman and a fool would have disclosed to this man, what he states under these circumstances colonel Despard did disclose, and that he should press him to take that oath, when he knew it was an act of high treason, when he also knew that man had refused to take that oath before? But let us follow this man a little farther; although he would not take the oath and was an enemy to the scheme, he went to this house in Hatton garden, and there, like the barons of old, they lay their bayonets across each other, and swear to be true to one another, and not to break up that meeting till they come to the determination of the time and place where an attack was to be made. Who tells you this? a man who says he is an avowed enemy to conspiracy, and always distinctly told every body so. If he did not choose to swear by the card, how came he to swear so deliberately by the bayonet? And this man, who says he never concurred in the conspiracy, who says I always told them so, in the next place tells you, I swore to be true by the bayonet, I swore I would not leave the room till the day was determined upon when all was to be executed that had been concluded upon! He swears colonel Despard said to him, "When your brother is so firm in the cause I wonder you should profess *different principles*," when he had stated that he just before had stretched out his hand with the arms with which he was intrusted by government to defend his sovereign and the laws, and swore by them that he would use them for the murder of the one and the subversion of the other:—is such a man as this to be believed, when proving so improbable a story as that which he has stated against the gentleman at the bar?

The only remaining witness is Emblin; he certainly is a man of considerably more sense, but he has as little honesty as the rest; he has varnished his tale over better, but still, when it comes to be examined, it appears to be equally defective in that which is essential to give it credit. Indeed there is a manifest hypocrisy about this man, which renders him more suspicious than the others; he tells you he refused to take the oath. Do not tell me of a man who refuses to take the oath, but goes to the meetings from day to day, and sits and hears these horrid stories told every night and either expressly or by his presence silently assents to them; who tells you that when it was settled that a cannon should be fired at the king, he shook with horror—At what?

not the destruction of the king, that does not seem to have discomposed him, but at the idea that perhaps some of his own party might accidentally fall by the stroke. Is a man who had only the sensations which he has described, no traitor, no accomplice? is he to be believed, unless he is confirmed up to the teeth? He comes here in chains, having been kept in custody ever since; the prosecutors cannot trust him at large; I hope some law may be made to prevent one so dangerous from ever being abroad again: men of such dispositions are to be shut up and guarded as other noxious animals are. He who was not shocked at all this treason, begged of my friend Mr. Garrow that he would not insist upon his disclosing such a circumstance, as that he said he would kiss the servant girl. The confirmed traitor, the companion of the assassins of the king affected to be ashamed of what many honest men would avow without a blush. Oh, hypocrisy, hypocrisy! thou art inseparably connected with every species of guilt; thou art the very soul of crime, and what art thou but specious falsehood? Truth and hypocrisy can never inhabit the same bosom; show me a decided hypocrite, and I see a man from whose lips nothing can come that has the stamp of truth.

I am persuaded that at this late hour of the night, fatigued as I necessarily must be in passing through so arduous a service, some observations must have escaped me, that those which have occurred to me I have not pressed with that force which the occasion demands at my hand; but I have one consolation in the assistance of my learned friend, who will soon follow me, and supply my defects; or even if he should fail in doing that, we have this farther consolation, that every thing which can be urged in favour of the prisoner will be stated by the noble and learned judge; any defect of mine he will supply, any inaccuracy he will correct. I have only to remind you that you are sitting in a British court of justice; it is one of the maxims of the country in which we live—that maxims upon which every thing dear and valuable depends—that you are to administer justice in mercy. You are sitting in a court of justice which is a member of the government of a free people; you will remember it is one of the principles of freedom that men are not to be compelled to an adherence to the government by terror, but to be attached to its laws by love. I am perfectly persuaded, therefore, that if you should agree with me presently in saying this case is not made out;—and it is not to be made out by conjecture, you are not to condemn unless all idea of innocence be completely extinguished by the weight of the evidence that has been produced upon the cause;—I say, if you should agree with me in saying you do not see satisfactory grounds for delivering over this gentleman to that horrid death to which you assign him if you pronounce him guilty, a verdict of acquit-

tal will have a greater effect than a verdict of guilty.

Gentlemen, I say, we are attached to our constitution and laws by love, and are not bound to adhere to them by fear; that love must necessarily be increased by such a circumstance as this, that after so many hours of trial by so respectable a jury, men of consideration and consequence in the country, this gentleman, after the attack that has been made upon him, is delivered from it by your verdict.

I am persuaded, that if there are any deluded persons in this country who fancy that we have not attained that degree of perfect freedom which is capable of being attained, though I should hope what has lately passed would operate completely to remove that delusion, nothing will so completely satisfy them of their mistake, as a verdict pronounced by you of not guilty, to-night; they will know, that when a subject is attacked by a prosecution not made out by fair and clear evidence, he is sure of protection in the uprightness and integrity of the judge and the mercy of the jury who try the cause. They will learn, that true freedom consists in the just and humane administration of law, and will observe and cherish the laws they find to be so administered.

I at one time intended to offer evidence in contradiction of these witnesses, but if I have shown them accomplices, and that the case is only proved by their evidence, I have shewn them unworthy of contradiction, and the attempt could serve only to increase the fatigue you have already undergone; but I shall offer most material evidence; I shall offer evidence of the character of this gentleman. If courts of justice are intended to correct the morals and confirm the virtuous inclinations of those who attend them, which is one great object of their institution, they cannot do it more effectually than by paying attention to the evidence of good character; it is telling a man that, if by the tenor of his life he shall acquire a good character, it shall afford him a shield in a court of justice in the day of trial. The evidence of character must have effect in another point of view; the attorney general has said every man is to be supposed innocent till proved guilty; it is much less likely that a man who has maintained a good character should become on a sudden the vilest of men, *nemo repente fit turpissimus*, than that one who has appeared less correct should become criminal. I say if this gentleman has borne a good character, which I shall show he has, that the case attempted to be made out against him is most improbable; one would rather almost believe that the stream should set back upon the fountain, than that a man who has deserved well of his country should concur with such miserable persons as you have heard to-day, in one of the most miserable conspiracies for treason that I ever heard of. I have too good an opi-

nion of the loyalty of this country, to give credit to this story. If the case is made out, it is a most detestable and abominable treason; if the case is made out, no man but would with satisfaction see the sentence of the law executed; but, remember the maxim of the attorney general, that, in proportion as the crime is enormous, so ought the proof to be clear.

Gentlemen, I beg your pardon for troubling you at such length at this time of night.

EVIDENCE FOR THE PRISONER.

Vice Admiral *Horatio* Lord Viscount *Nelson*, K. B. sworn.—Examined by Mr. *Gurney*.

How long has your lordship known colonel Despard?—It is twenty-three years since I saw him. I became acquainted with him in the year 1779, at Jamaica. He was, at that time, lieutenant in what were called the Liverpool Blues. From his abilities as an engineer, I know he was expected to be appointed—

Lord *Ellenborough*.—I am sorry to be obliged to interrupt your lordship; but we cannot hear, what I dare say your lordship would give with great effect, the history of this gentleman's military life but you will state what has been his general character?—We went on the Spanish Main together? we slept many nights together in our clothes upon the ground, we have measured the height of the enemies wall together. In all that period of time no man could have shown more zealous attachment to his sovereign and his country, than colonel Despard did. I formed the highest opinion of him at that time, as a man and an officer, seeing him so willing in the service of his sovereign. Having lost sight of him for the last twenty years, if I had been asked my opinion of him, I should certainly have said, if he is alive, he is certainly one of the brightest ornaments of the british army.

Vice Admiral Lord Viscount *Nelson* cross-examined by Mr. *Attorney General*.

What your lordship has been stating, was in the years 1779, and 1780?—Yes.

Have you had much intercourse with colonel Despard since that time?—I have never seen him since the 29th of April, 1780.

Then as to his loyalty for the last twenty-three years of his life, your lordship knows nothing?—Nothing.

General Sir *Alured Clarke* sworn.—Examined by Mr. *Sergeant Best*.

How long have you known colonel Despard?—I cannot exactly speak as to dates; but I think I may say with safety, thirty years.

From your knowledge of him what do you state to be his character?—I knew he was very much respected by the officers of the corps, and I considered him as likely to be a

very useful officer. I knew him at a later period, whilst I was in the government of Jamaica; he was under my orders during the six years I was in the government. I saw him frequently, and had intercourse with him. I always considered him to be a very loyal, good subject, and a good officer.

General Sir Alured Clarke cross-examined by Mr. Solicitor General.

How long is it since you were last acquainted with colonel Despard?—I think it is thirteen years since I have either seen him or had any intercourse with him. From the period of my quitting the government of Jamaica in the year 1790, I have never seen him, nor had any communication with him.

During the period of which you have been speaking, you have given a very high character of colonel Despard; was he at that time in the habit of associating and living with the common soldiers?—I never knew such a thing; I should have had a very different opinion of him, if I could have thought it.

Sir Evan Nepean, baronet, sworn.—Examined by Mr. Sergeant Best.

Do you know colonel Despard?—Yes.

How long have you known him?—Ever since the year 1784.

Down to this time?—Yes. I have not personally had any communication with him since the first suspicions fell on him.

Up to that time you had?—Yes.

Till that time what was your opinion of his loyalty?—I did not at all suspect him.

Did he bear a good character?—A respectable character.

You knew him officially?—Yes; officially.

Was his general conduct such as to entitle him to that character?—When he first presented himself to me, he brought such testimonials as made me hold an high opinion of him.

Sir Evan Nepean, baronet, cross-examined by Mr. Sergeant Shepherd.

How long is it since you had any intercourse with colonel Despard?—Five or six years.

Did you know much of him yourself?—On his coming to England, I had intercourse with him officially. I had so high an opinion of him that I invited him to my house.

Now you have an opportunity of knowing his character, do you consider him as a loyal man?

Mr. Sergeant Best.—You will state your opinion of him from your own knowledge of him; that opinion I understand to be a good one, as far as you have known him?—Yes.

Lord Ellenborough.—What is his present opinion, independent of the business of to-day, may be the question.

Mr. Sergeant Shepherd.—Independent of every thing you have heard to-day respecting colonel Despard, do you mean to represent him as bearing the character of a loyal man,

from what you have heard of him?—I know that he fell under the suspicions of government, and was imprisoned for a considerable time, and I supposed there was some ground for it, though I did not know what it was.

Mr. Sergeant Best.—Your only reason for forming a different opinion was, the circumstance of his having been committed?—Yes; I had no other ground; the reasons for that I was perfectly unacquainted with.

[The end of the Evidence for the Prisoner.]

Mr. Gurney.—May it please your Lordship, and Gentlemen of the Jury; Exhausted as I am by fatigue, both of body and of mind, and oppressed by indisposition, which almost incapacitates me for the discharge of a much less arduous duty than that which is cast upon me, I am now called upon to make some observations in defence of the gentleman at the bar.

If, gentlemen, under these circumstances, I had stood in the situation of my learned and excellent leader, I should have trembled for myself, and I should have trembled more for my client. But, when I recollect the speech which you have so lately heard from him, I feel the duty which is imposed upon me light and trivial, compared with that which he has performed; and I trust I shall be able very shortly indeed to discharge the whole of the duty which is incumbent upon me.

Gentlemen, I cannot but rejoice in this case, that there is no question of law by which your minds can by any possibility be embarrassed; that this is purely and simply a question of fact; but you will observe what sort of fact it is. The ancient criminal law of this country adopted the maxim generally, *voluntas pro facto*. That maxim is in every other case exploded; but though it is exploded in every other case, yet on account of the high estimation in which the law justly holds the person of the sovereign, it is retained in treason; retained as it is in treason, it affords a prodigious latitude to such persons as are sometimes called in cases of treason—to such persons as have been called to-day—to say that which they know they may say with impunity, because they know it is not in the power of the most innocent man to contradict them by evidence. A person accused of this crime, is therefore subject to peculiar disadvantages. The law has recognized the peculiar disadvantages in which a person stands who is accused of treason, and it has therefore given him peculiar privileges for his defence. These privileges are great compared with those of persons accused of other crimes; but, give me leave to say they are not too great. When a man is oppressed by all the weight and authority of government, and when a crime so atrocious as this is imputed to him, little chance, indeed, could he have of a fair and impartial trial, if the law did not distinguish his case from the cases of other persons, who are prosecuted in the usual way, and to whom crimes of a less degree of enormity are imputed. Inasmuch

as the crime here charged is the intention of the mind, which can be known only to the great Searcher of hearts, it must be made manifest by certain overt, or open, acts, which overt-acts must be stated in the indictment, for this among other reasons—to enable the prisoner to answer the charge brought against him. I do not mean to say, that the overt-acts which are charged in this indictment, are insufficient to sustain the indictment; but allow me to ask, which of them could prepare colonel Despard for adducing any evidence whatever to contradict the witnesses whom you have heard to-day?

The indictment charges him, together with divers other persons (and if the conspiracy be once established, and colonel Despard be proved to be a conspirator, the act of one is the act of all) with endeavouring to administer unlawful oaths, with endeavouring to seduce soldiers from their allegiance, and with divers meetings and consultations (no place being named) for the purpose of deliberating upon the way and manner in which the king might be seized and put to death. But nothing whatever is charged, which has been proved by an unsuspicious witness, or which, being sworn to by such witnesses as you have heard, could possibly be contradicted by the prisoner. These circumstances deserve particular notice in a case where the crime charged is the most atrocious that it can enter into the heart of man to conceive; a crime which includes so many others within it, that that man must be indeed hardened in guilt, who could go on from hour to hour, and from day to day, in the contemplation of it, and in the consideration of means for its perpetration. The crime itself is improbable and unnatural, it is still more so when attended with such aggravations. If it be unnatural, if it be improbable, then it ought to be made out to you by witnesses who are above suspicion.

The act of parliament regulating trials for high treason, which passed in the reign of king William the third, requires the evidence of two *lawful* witnesses to convict any man of high treason. The act of 36 Geo. 3rd upon which the last two counts of this indictment are framed, uses the expressions two *lawful* and *credible* witnesses; but still I think it goes no farther than the act of William 3rd, because it never could be the intention of that law, or of any law, that upon the oaths of two *lawful* witnesses, by which are meant *competent* witnesses; that upon the oaths of two witnesses competent to be examined, the guilt of any individuals should be ascertained, unless it should turn out upon the examination, that the witnesses were not only *competent* but *credible*; that they were witnesses of whom you had this opinion; that when they attested the Supreme Judge of heaven and earth to the evidence they gave, they had that sense of the moral obligation of the oath they took, that fear of God in their hearts, and that dread of future punishment which should deter them from perjury.

Gentlemen, I shall not follow, because I should follow with very unequal steps, my learned leader in his observations upon these witnesses; but I beg to ask, if colonel Despard is to be convicted upon the oaths of two *credible* and *lawful* witnesses, who are those two *credible* witnesses, upon whose oaths his blood is to be shed? Is Windsor one? Is Blades? Is Francis? Is Emblin? Is any one of these four men who have stood up to-day, without confusion and without a blush, confessing themselves parties to the most detestable plan that was ever formed, confessing that they are the most wicked and abominable of mankind, avowing that they have been guilty of that crime, which, above all others, must render them infamous and detestable; and at the same moment asking credit from you; and to do what respecting themselves? To redeem themselves from destruction by swearing away the life of colonel Despard. That is the situation in which they stand. If they stood here in circumstances of no peril themselves, if they stood here indifferent as to all other observations upon them, if they were pure and spotless upon any other transaction than that which they themselves have stated to you; even though an act of grace and amnesty had passed, and they could not legally be called in question, and not an hair of their heads could be touched; I ask you, *would they EVEN THEN* be men worthy of belief to the extent of finding any man whatever guilty of a capital offence?

Gentlemen, you have been told that in former cases, persons have been found guilty upon the evidence of accomplices, although not a great deal of their testimony was confirmed by unexceptionable witnesses; I know that was the case in the reign of king William, and in the years 1715 and 1745. But those accomplices were men of a very different description from those whom you have heard, and were entitled to a very different consideration when they gave their evidence in a court of justice. Of what description were the accomplices who were called in the reign of king William? They were a part of a very numerous class in this country, who conceived that the oaths of allegiance they had taken to king James, could not be rescinded by any acts king James had done, nor even by any acts of that convention-parliament which had pronounced upon his abdication, and had seated William and Mary on his throne. They thought (and that they thought honestly no man doubts) that king William was an usurper, and that to expel him by any means, and by all means, and to restore king James, was not only justifiable, but was loyal, honourable, and meritorious. Nor were those accomplices the only persons who thought so; there were many thousands of good but mistaken men in this country who were of the same opinion. When such persons were discovered in their treason, and when they became witnesses, because they

had not the constancy to carry their opinions with them to the scaffold, and preferred giving evidence to dying martyrs to their cause, they were regarded with very different feelings from those with which such witnesses as you have heard to-day can be contemplated by any man whatever.

The same circumstance occurred in the year 1715 and 1745. The claims of the house of Stuart were then recognised by a very large party in this country. There was a prince in a foreign country ready to assert his right by force of arms, and there were powers in Europe leagued together to assist him in his restoration. When those two rebellions were suppressed, and persons engaged in them were brought into courts of justice to give evidence against their associates in treason, juries could do no otherwise than convict upon their testimony, because they came before them with moral characters unstained; for they, as well as those against whom they were called as witnesses, had acted conscientiously, though upon erroneous principles: and although public policy and public safety required the execution of many who were so convicted, yet those persons went to the scaffold, attended not only by the compassion, but by the respect of all men.

No inference can, I submit, be fairly drawn from the credit afforded to accomplices in those cases, in favour of the accomplices in this case. Those accomplices deserved pity for their errors and their misfortunes; these, contempt and execration for their atrocious crimes. And I entreat you to bear this constantly in your minds, that they are not only loaded with crimes, but that, by accusing colonel Despard, they are rescuing themselves from perdition.

The attorney-general himself has anticipated me in some of the observations that I should have made. My learned leader has anticipated me in many more, both upon the probabilities, and upon other parts of the case. But give me leave to call your attention for a single moment to the matter of *probability*. The study of probabilities has been called "the science of judges." Whatever witnesses may swear, *probability* is the test by which we try their evidence. If a man come into a court of justice, and tell you that another has committed an assault upon him, you will require but a slight degree of evidence to convince you of that, because every day's experience teaches you that nothing is more probable than that such a thing should happen. If a man come and accuse a poor miserable ragged wretch of committing a felony, you do not require uncommonly strong evidence (though even of that you would not convict the most miserable creature that exists, merely upon the evidence of an accomplice) because every day's experience teaches you it is not at all improbable. If the charge be forgery or murder, you require stronger evidence. How much more evidence then still would you require to convince you that any

man, who is not a fit inhabitant for Bethlem, could be a party to such a plot as you have heard commented upon with so much ability and eloquence by my learned leader, in which a few low and obscure individuals are supposed to have met at an ale-house, to concert measures for destroying a government, mighty in its physical, mightier in its moral energies; strong in its civil and military establishments, infinitely stronger in the affections of the people;—a plot so ridiculous and absurd, that, as my friend has observed, fifteen men are stated to have contrived the overthrow of a government supported by the unshaken loyalty of fifteen millions.

I think I should be wasting your time, if I were to go at length into observation on the evidence which has been offered you. I am sure when his lordship recapitulates that evidence, you cannot fail to observe upon the very many circumstances, from which the extreme improbability, I might say the impossibility, of such a plan as this, must be apparent. But how is it possible for colonel Despard to furnish you with any evidence to contradict this? Ignorant of the persons with whom these people would associate him, and seduced to that meeting at the Oakley Arms by Windsor, for the purpose of giving some colour to the charge he was meditating against him, with a view to extricate himself from the dangerous situation in which he was placed, colonel Despard could not foresee the times and places, at which these witnesses would affect to speak to his presence and conversations. This trial cannot be adjourned for him to search for witnesses, to show where he was at those several times to which the witnesses have spoken. For his deliverance, therefore, he must rely, as in the same circumstances any of you must rely on the improbability of their story and the infamy of their characters.

Gentlemen, the improbability of the story which you have heard, is heightened by the evidence which we have adduced to the professional character of colonel Despard. You have it proved, beyond all question, that he is a man of great military skill. Whatever these low and ignorant men, whom you have heard, might design or might think, could colonel Despard be so insane, as to contemplate the possibility of subverting the government, by means so totally inadequate?—The learned attorney-general himself felt the difficulty, and endeavoured to surmount it. "Enthusiasts," said he, "over-rate their means; enthusiasts overlook obstacles." Unquestionably they do. But what reason have you to believe that colonel Despard is an enthusiast? None.—Has any witness so described him? Certainly not. The attorney-general then is begging the question, by assuming that the colonel is an enthusiast, in order to give some colour of probability to the supposition of his engaging in a plot, more foolish, if possible, than wicked.

It is impossible, gentlemen, to review the evidence that has been given to-day, without turning from it with disgust, and without wishing, most anxiously, that some information might be obtained from sources, less impure and polluted.

These accomplices who have been called to-day (upon whose evidence it would be impossible for you to convict the gentleman at the bar, of an offence much less enormous, and attended with infinitely less improbabilities), might have obtained confirmation, if their story had been true. Emblin has chosen to tell you of a long conversation, supposed to have passed at the Oakley Arms between colonel Despard and him, just before the officers came in; a conversation which, if it passed, must have been heard by every other person in the room. Now there were no less than thirty of those persons apprehended, of whom thirteen only are indicted, and yet but two are called as witnesses. Fourteen or fifteen they are, who are neither indicted nor examined. Who they are I do not know; colonel Despard does not know. It was not in his power, therefore, to instruct us to call them. Why are they not here? let the attorney-general answer that question. It cannot be put to my learned leader or me. These witnesses have been in the possession of government; they have been examined by the privy council; they have been discharged upon their own recognizances, and must have stated, in those recognizances, where they were to be found. Whether they were all innocent men or not, I am sure it is not to be suspected; nor is it suggested, that all of them were guilty. If the witnesses who have been called have spoken truth, some confirmation they must have received by the examination of those persons, had they been produced on the part of the crown. If therefore, any confirmation could have been derived, from persons who were less liable to suspicion than those you have heard; from persons, who had not been administering or taking oaths; who had not been at all these treasonable meetings; who had not, after hearing treasonable conversation at one meeting, *for the humour of the thing*, gone to another, and heard other treasonable conversations, those persons would have been produced. If they had been produced, you would have obtained more truth, you would have obtained more satisfaction. One of two things must have occurred. If these witnesses have sworn truly, they would have been confirmed; if they have sworn falsely, they would have been contradicted. Every presumption is to be made in favour of the party accused in such a case. Every presumption is to be made against the suppression of witnesses. Why does not the crown produce them? The crown has them in its power. The witnesses are not here. The inference is to be drawn by you, and, in my humble opinion, the inference is inevitable.

Gentlemen, I have already observed, that it is utterly impossible for colonel Despard to produce any evidence to the fact itself. Give me leave to ask, if any of you had been, by any artifice, seduced to that meeting at the Oakley Arms, and had been found, therefore, in the company of these persons, and had afterwards had all that charged upon you which is charged upon colonel Despard, what could you have done? Till this day we knew not the places or the days the witnesses for the crown would choose to fix upon. The year past was all before them where to choose. Colonel Despard could not be provided with evidence, to show where he was every day within these last few months, in which these witnesses were at liberty to range to make up the charge, therefore it was impossible to adduce any other witnesses than those whom he has adduced—the noble and honourable persons, who have deposed to the character he has heretofore borne.

Lord Nelson takes it up in an early stage of his life, and tells you what a man he was, and what a character he bore, at an early period of his service. No man can be insensible to the value of such a character from such a man as lord Nelson, whose name distinguishes and adorns his country.

The next witness is an able and gallant general who has long, faithfully, and meritoriously served his country. Sir Alured Clarke informs you what was the character of colonel Despard while under his command in the island of Jamaica. This character is brought down to a later period, to 1798, by sir Evan Nepean, who had the best knowledge of him of all, namely, official knowledge; and he states, that both from the testimonials he brought over from Jamaica, and from the official intercourse he had with him, he entertained for him the highest respect. That knowledge and that intercourse would have been continued to the moment at which this gentleman appears at the bar, but from the circumstance of his having been arrested in 1798, a circumstance which he has been forbidden by law to explain. If he is denied the advantages of vindicating his honour in the face of his country, as he would have done but for the Act of Indemnity, he ought not to have the disadvantage of any unfavourable conclusion being drawn against him on that account. The long imprisonment under that arrest, cuts off colonel Despard from evidence to his character of a later date.

With respect to lord Nelson and general Clarke, their respective services in distant parts of the world, necessarily separating them from colonel Despard, fully explain the reason, why the character they give him does not come down to a late period; because it is clear, from the estimation in which they held him, that if they had been in the same part of the world, their intimacy would have continued to subsist.

Gentlemen, the task which naturally de-

volved on me, in the station assigned me in this cause, is the summing up of the case of the defendant. If my learned friend, Mr. Sergeant Best, had omitted any observations, which appeared to me material in this gentleman's defence, I should make no apology for trespassing longer on your patience, tried as your patience and wearied as your attention must be; but when there are no omissions to be supplied, it would be unpardonable in me to risk the weakening the impression my learned friend has made upon you, by going again over the ground which he has trodden. But before I sit down, I must intreat your serious attention to one observation more. There have been many cases in the history of the criminal jurisprudence of this country, which should impress caution on the minds of jurymen; many in cases of other crimes; many in cases of treason. How many innocent men have died in consequence of the credulity of jurors? I will refer you only to the supposed Popish Plot in the reign of Charles the 2nd, for which as many men as are indicted here suffered unjustly; the juries, by which they were tried, being deceived by the hardy swearing of witnesses, not more infamous than those whom you have heard to-day. And yet those juries were countenanced by the whole nation, the two Houses of Parliament leading the way. So firm and general was the belief of that plot, that to dispute or doubt its existence, was deemed a mark of disaffection to the Protestant cause. In a short time the veil was torn off; the perjury which had triumphed was discovered to be perjury; but it was too late; the dead could not be recalled from the grave, and the jurors who had sent them there, were left to the bitter reflexions of their consciences, to the unavailing lamentation of their credulity. But though those persons died *unjustly*, I trust they did not die *in vain*. Their innocent blood speaks aloud to you not to follow the fatal example of your predecessors, not to lend, as they did, too easy faith to the testimony of wicked men. May you attend to the warning voice, and pronounce a verdict of acquittal, of which, I trust, you never will have reason to repent.

Lord Ellenborough.—Colonel Despard; if you have any thing to offer to the jury, it is now the time to make such observations as occur to you to be material for your defence, if, having already been defended by your counsel, you shall think fit to add any thing to the observations they have made on your behalf.

Prisoner.—My lord, my counsel have acquitted themselves so very ably and so much to my satisfaction, that I have nothing at all to say.

REPLY.

Mr. Solicitor General.—May it please your Lordships; Gentlemen of the Jury;—It is now my duty, as one of the counsel for the Crown, to trouble you with a few observa-

tions upon the whole of this case. And although, in the discharge of this duty, I feel much more anxiety than I ever before experienced in my life; not only from the importance of the subject before you, but from my great inexperience in any court of this description; yet I ought to be in a great degree relieved by the consideration, that I am addressing a careful, an attentive, and an intelligent jury, acting under the directions of a Court, which can give them every assistance and information upon any point of law that could arise, and will make to them every fair observation upon the evidence that has been produced, in the course of this serious and important trial. This consideration, gentlemen, at the same time that it ought to relieve my mind from much of the anxiety I feel, will certainly induce me, in addition to many other reasons I could state, to compress, within as narrow compass as I am able, the observations I think material to make to you in this stage of the trial, and to take up as little of your time as the nature of the defence, and the importance of the subject you are to decide upon, will admit.

Gentlemen, this trial, although it has occupied a great deal of your time, involves in it no intricate or complicated question. It requires no conjectures to be raised, no deductions to be made, no inferences to be drawn, to constitute, and to bring home the offence alleged against the prisoner. But it is a direct, distinct, and positive charge against him, of a conspiracy against the king; of intending either the death of the king, the seizing the person of the king, or the deposing him from his throne; and if any one of the circumstances stated in this indictment, as manifesting such a traitorous intention, and in furtherance of such a design, has been sufficiently in point of law, and satisfactorily in point of fact, established by the evidence you have heard, it will be your duty—I speak under the correction of the Court—it will be your duty, painful as the discharge of it may be, to pronounce the prisoner guilty. If no one of these overt-acts has been so established, the prisoner is undoubtedly entitled to his acquittal.

Let us then, gentlemen, for a moment see what it is that the law requires to be proved, and what, in point of fact, has been established by the evidence you have heard. The law requires two witnesses in the case of high treason, either both to the same overt-act of treason, or to two different overt-acts of the same species of treason, the one witness to one overt-act, the other witness to another overt-act; and it farther requires, that there shall be proof of an overt-act within the county in which the prisoner accused is tried. This being what the law requires, now let us see whether that requisition has or has not been satisfied, by the evidence you have heard.

But before I call your attention to that evidence, it is material that I should remove from your minds a doubt that has been raised

By the ingenuity of the learned sergeant, in stating to you what is in point of law an overt-act of treason. The learned sergeant states, that treason cannot be made out by words, and he has quoted as an authority, a very ingenious French author. Now, gentlemen, if my learned friend means that loose words, having no reference to any act or to any design—that, for instance, in this case, loose words spoken not at any meeting or conversation, nor with any view to a meeting or consultation for the purpose—if my learned friend means that such words will not amount to an overt-act of treason, I agree with him. If he means any other thing, I differ from him, and the Court will decide between us, what, in point of law, amounts to an overt-act of treason. But before I make that appeal, and in order that I may be the better understood in the observations I am about to make on the evidence in this case, I will state the law from an authority that I am very sure will be much more satisfactory to you, than that quoted by my learned friend. For I apprehend, that when an English jury are assembled to administer the law of their country in the most important case that can arise before them, they will be acting more safely—they will be acting more satisfactorily and prudently—by collecting the law from the learning and experience of English judges, than from the opinion of an ingenious French author; that when I state to you the opinion of lord chief justice Holt, assisted by some of the ablest judges who ever sat upon the bench, when I quote the opinion of Mr. Justice Foster, I think you will find that I am stating that which is the law of England, and that I am quoting authorities much more safely to be relied upon and pursued, than the writings of Mr. Montesquieu, the author cited by my learned friend.

What I allude to with respect to the question, how far words are to be considered as an overt-act of treason, will be found in the fourth volume of the State Trials,* upon the trial of Charnock, King, and Keyes, in the eighth year of king William 3rd. They were indicted as conspirators in what was called the Assassination Plot. That was a plot to assassinate king William 3rd, and to restore king James 2nd to the throne.

Lord chief justice Holt, assisted by lord chief justice Treby, lord chief baron Ward, Mr. Justice Nevil, Mr. Justice Powell, and Mr. Justice Rokeby, upon this occasion, and upon this very question of loose words, whether they did or not amount to an overt act of treason, in his summing up to the jury upon that trial, says, “Now I must tell you, gentlemen, that what is said that bare words are not treason is very true in some cases, for loose words spoken without relation to any act or design are not treason, or an overt act. But arguments and words of persuasion to

engage in such design or resolution, and directing or proposing the best way for effecting it” (you will find how very pointedly that applies to the overt act to which I shall presently bring your attention) “are overt acts of high treason, as much as if two agree together to kill the king, though the agreement be verbal only, and not reduced into writing. Likewise consulting together for such a purpose, is an overt act of treason.”† This I state to you to be the law: if I am incorrect, I shall certainly be, as I am very anxious, particularly in a case of this sort, to be, corrected by the very able and learned Court that is here assembled.

Mr. Justice Foster speaks to the same effect. In his first discourse upon the species of high treason, which is the subject of the present trial, and of the charge against the prisoner. Mr. Justice Foster says, “loose words, not relative to any act or design, are not overt acts of treason; but words of advice or persuasion, and all consultations for the traitorous purposes treated of in this chapter” (i. e. of high treason, in compassing the king’s death) “are certainly so.”‡

Thus, gentlemen, having I hope sufficiently settled what is an overt act of treason in regard to conversations, I will proceed. I stated to you that it is necessary on the part of the Crown, in order to establish the case against the prisoner, to give evidence of an overt act in the county in which the prisoner is tried. I wish to bring your attention, therefore, to the evidence of Emblin. Emblin is said to be an accomplice; I do not admit that to be the fact, but I will now take him to be an accomplice; upon that part of the case I shall make some observations presently. But first let us examine what has been proved, and then consider what credit is due to the proof, and upon both points, I assure you, gentlemen, I will add as little as possible to the fatigue you have already undergone; but if in the course of what I state, I should suggest any thing which can contribute to that verdict which is consistent with the justice of the case, and which shall be satisfactory to your own consciences, and satisfactory to the public, I am sure you will not think, that whilst I am endeavouring to discharge my duty, I am wasting your time.

The evidence of Emblin rests not upon his single testimony, but is so confirmed by other witnesses, so confirmed by other circumstances, so unshaken by any thing that has been proved, or by any thing that has been said against it, that I submit with great confidence it is intitled to your credit, and I most earnestly beg your particular attention to that part of the case, when the noble and learned lord who presides in this court, shall state, as he will do, accurately and particularly, the

* Vol. 12, p. 1459.

† Foster’s Crown Law Discourse, 1, ch. 1, s. 7.

* 12 Howell’s State Trials.

whole of the evidence given upon this trial. I do not mean to waste your time by repeating all that has been proved by Emblin; but shall only state the substance of it. He tells you, that Lander had mentioned to him some time ago, that there was something very serious upon the carpet, and that they looked to colonel Despard as their head. And then he states, that on the Friday evening preceding the meeting at the Oakley Arms (when colonel Despard and his associates were taken into custody) that on that Friday evening, whilst he was sitting at the Queen's Arms, at Vauxhall, with Graham, one of the persons charged in this conspiracy, Broughton came in to them. Who Broughton is, his activity in this business, his malignity, and his intimacy with colonel Despard, have been proved by almost every witness that has been examined. Broughton came in; he joined company with Graham and Emblin; and he stated to them, that he wished them much to go with him to the Flying Horse at Newington, where they would see a nice man. Upon inquiry, he stated that colonel Despard was the person who was to be there. Emblin then asked Broughton what it was for, and Broughton said the business was fixed, the king would be stopped upon his going to, or upon his returning from the House at the meeting of parliament, and that Tuesday se'nnight was the time fixed when the business was to be done. Emblin and Graham agreed to go, and they did go to a little obscure alehouse, the Flying Horse at Newington, where they found colonel Despard in a private back parlour, secret and close, in company with Windsor, a private soldier of the guards, with Smith a working hatter, with Broughton a working carpenter, Graham and Emblin; these composed the meeting. When they came there,—for I do not mean to waste your time in stating the evidence with particularity,—you will find that very soon after Emblin came into the room, he got into conversation with colonel Despard; he asked him what was the nature of the business; colonel Despard said there was a wish, or intention among the people, to recover some of their lost liberties. There is something in that sentiment, which, in the language, as well as in the tendency of it, has a strong resemblance to, and correspondence with, the printed paper that formed the bond of union and of secrecy in this conspiracy. That was the outset of their conversation. Colonel Despard then stated, that he thought this was the time; that he had force in abundance; that the people at Birmingham, Leeds, and other places, he saw were ripe for the matter; that he thought the Tower could be taken, and the Bank might be seized; and then he went into a conversation about stopping the king's coach, and seizing upon his majesty; that was much discussed amongst them; doubts were raised by some, and removed by others, as to the best and most effectual mode of doing it; and after many diffi-

culties had been started, colonel Despard said, "he would do it with his own hands;" and then, or about that time, comes that memorable expression, which I am sure must have shocked every man who heard it, and which I cannot repeat without a degree of feeling which I cannot describe;—I mean that declaration of colonel Despard, "that he had well weighed the matter within him, and his heart was callous." What does this meeting at the Flying Horse, Newington, prove? It proves the whole of the charge: it proves the existence of the conspiracy, which the learned sergeant (of counsel for the prisoner) indeed admits to have existed; it proves one of the objects of that conspiracy to have been an immediate, direct attack upon the king's life; it proves the attack upon the Bank, and the attack upon the Tower to be other objects of this conspiracy. Why, gentlemen, as far as the evidence of one witness goes, the whole charge contained in this indictment is proved against the prisoner.

But does this case rest upon the single testimony of Emblin? What is the account Windsor gives of it? Windsor is an accomplice; or he is a spy; it is immaterial which. Windsor gives you much the same account that Emblin does; he tells you all the topics of conversation, or nearly so, that Emblin speaks to; but observations have been ingeniously made by the learned counsel, of differences between the evidence of these two witnesses, and I admit that they do not, either in the language, or in every circumstance which they state to have passed at that meeting, exactly agree. And I will appeal to your own experience, whether two persons of the most unimpeached characters and veracity, speaking of a conversation, and meaning to speak the whole truth, will relate precisely every circumstance, and state it in precisely the sameway; it is the nature of men's minds not to do so, even though they may both mean to speak the truth; for one circumstance will make a stronger impression upon the mind of one man, than upon the mind of another, and while the mind of one is impressed with any particular circumstance and intent upon it, things will escape him, which other witnesses will speak to. It is by these variations—these differences—that you may distinguish between a true and fabricated story; for if Emblin and Windsor had been witnesses suborned to speak to that which was not true, you would find them agreeing, not only in all the circumstances, but telling their story in precisely the same words. They differ in some circumstances, and I submit that that is a criterion of truth, and will always distinguish a true from a fabricated story.

But does this matter rest only upon the evidence of Emblin and Windsor? What is the account Mrs. Plowman, the landlady at the Flying Horse, gives? She tells you there was this meeting—that it was a very private meeting—at her house; that six persons were

present; that one came with an umbrella; that they were in very earnest conversation, and she heard (and she was impressed by it) one of the party say, that he had weighed the matter well, and his heart was callous; that dreadful declaration is proved, by Windsor and by Emblin, to have been made by colonel Despard. Then here you have that proved by accomplices which accomplices alone can speak to, and their evidence so confirmed by the testimony of a person of unimpeached character, Mrs. Plowman, a person perfectly unconnected with the conspiracy, and innocent of every part of it, and who does confirm their account by proving the meeting at her house at the time they speak to, composed of six persons, two of whom she recollected, and the others she described, but she could not speak positively to colonel Despard, for he went away before the rest, but there was a conversation passed before the others left her house, which enabled her to recognise Emblin, and Windsor she knew before. I say that their evidence is so confirmed by Mrs. Plowman in every part in which there could be any collateral proof, that they are intitled to credit in despite of any objection to them as accomplices. Then what follows?

You observe—and it is a material observation—that in a private conversation at this Flying Horse, between Windsor and colonel Despard, this passed.—Colonel Despard said to him, “your name is Windsor, Wood has told me of you.” Now, gentlemen, have you forgotten who this Wood is? He is another of the persons charged in this conspiracy, and I think (if the account that has been stated is true) the worst traitor of them all. Wood, the friend of colonel Despard, had mentioned to him who Windsor was. Really, when we come presently to consider what the defence is (I mean the character of colonel Despard) I am sure it must shock the feelings of every man who hears it repeated. You recollect Wood is a private soldier in the guards; he was the man who was to place himself sentry over the great gun in the park, in order to fire it at the king’s coach. Wood was the man who said that if he was not present at the grand attack, he had a reserve, and would do his duty equally well elsewhere. Wood was the person who recommended that they should have thirty or forty people (and he would command them) who should seize the king in his way from St. James’s to the queen’s house. This is the friend of colonel Despard, and the man through whom he became acquainted with the character of Windsor.

Well; colonel Despard having told Windsor that Wood had spoken of him, he appointed Windsor to meet him on the next Monday, the 15th of November, at the Tiger on Tower hill, and to bring with him five or six intelligent persons, that they might farther consider of the best mode of executing the plan. Windsor went there; colonel Despard also was true to his appointment, and they met; when,

observing some soldiers there whom neither of them knew, the colonel proposed that they should adjourn to a house opposite Whitechapel church. They accordingly, taking different ways lest they should be observed, met at another alehouse, and then colonel Despard brought with him a man of the name of Heron (and that is material to recollect). Windsor had taken with him only one soldier, a man of the name of Winterbottom. The fact is, that Winterbottom is in custody under this charge, but not being at any of the meetings in Surry, he cannot be tried in this county. These four persons met at an alehouse at Whitechapel. Windsor gives you an account of what passed between them. He tells you that Despard mentioned to him that the muskets deposited at the Bank, having had their locks taken off, could be of no use to them; he then consulted with Windsor farther about the manner of taking the Tower, and he told him the king must be seized, and must be put to death; confirming the account he had before given of himself, that he had well weighed the matter within him, and his heart was callous.

Does this meeting rest upon the evidence of Windsor only? you have heard that Dean and Campbell, two soldiers, as innocent of this conspiracy as yourselves, by mere accident happened to be at this last alehouse: that they both speak distinctly to four persons coming in on that Monday; they both knew Windsor before, they prove him to have been one of the four, and they speak positively to the identity of colonel Despard. This meeting then does not rest upon Windsor’s evidence. What passed between him and colonel Despard, could only be proved by Windsor, for it was private and between themselves. Upon that subject I reserve myself at present. Walker, the landlord of that alehouse, gives a rather different account; he says that Windsor came not in regimentals, but in coloured clothes, but you recollect he could not speak to Despard, and he certainly has mistaken Windsor for Heron. But at all events he could not recollect Despard, and therefore his account of the matter can hardly be considered as a contradiction. You have, then, Dean and Campbell, two men unconnected with this conspiracy, both of whom positively speak to the fact of this meeting at Whitechapel, between colonel Despard, Heron, a discharged soldier, and Windsor and Winterbottom, two other private soldiers; and Windsor gives you an account of what passed there. My learned friend says, it is impossible to bring witnesses to contradict them; that is not correct. They might have brought Heron to give his evidence in contradiction to Windsor, but they dare not; and they have given no account whatever, to explain away the extraordinary meeting between colonel Despard and three private soldiers, at a little obscure alehouse.

What happens in consequence of this meet-

ing at Whitechapel? at the close, colonel Despard expresses a degree of disappointment that Windsor had not brought so many men as he promised, and appoints him to meet again at the Oakley Arms, the 16th of November, (the night they were taken up): colonel Despard does go to the Oakley Arms that night, agreeably to his appointment; Windsor also keeps his engagement, but Windsor comes too late; the officers of the police had interrupted the meeting, and taken colonel Despard and his associates into custody before Windsor had arrived, but not before you have the character of that meeting sufficiently proved, to show that it was for the purpose of farther considering the plan that had been agitated at the Flying Horse, at Newington, that had been spoken of again at the alehouse in Whitechapel, and renewed and farther prosecuted at the Oakley Arms. Emblin was there. How came he there? why, the same person, Broughton, who had introduced him to colonel Despard, at Newington, invited him to go there, where the matter was to be farther adjusted, and finally settled. How came Broughton there, himself? why, to meet colonel Despard. How came Lander there? he spoke also to Emblin, and desired him to go; and he, himself, was there for the same reason Emblin went. How came colonel Despard there? why, agreeably to his appointment with Windsor, farther to consider of that which they had before agitated, as I have stated to you, and which was happily interrupted by the police-officers, at the Oakley Arms. At this meeting you remember that Emblin renewed his conversation with colonel Despard about the taking of the Tower, and the other topics which had been discussed at Newington; and you recollect, that those papers which have been so much commented upon were found, three of them in the pocket of Broughton, one in the pocket of Phillips, and another lying upon the ground. Upon these papers I shall make an observation or two presently.

This, gentlemen, is the account of what passed at these meetings, and if it were to rest here, and no other proof had been given, I should with great confidence insist, that every part of this charge has been distinctly and satisfactorily proved. The existence of the conspiracy is admitted; the objects of the conspiracy have been proved by witnesses who stand confirmed in every thing in which accomplices can be confirmed; that is, by those who speak to such collateral facts, as might be known by persons not parties to the conspiracy, or present to hear what passed at such meetings. You find, that every thing spoken of by Emblin or Windsor, is in some manner confirmed by circumstances, or witnesses clear of every imputation.

I say, then, if it were to rest here, I should with great confidence submit to you, that this heavy charge against colonel Despard, has been distinctly and directly proved. But

if this were the only account we could give of it; if it began and ended with what I have stated to you; if we could not trace the history of this conspiracy farther back than to the meeting at the Flying Horse at Newington; if we could not show circumstances leading to the declaration of those resolutions, which were without reserve made by colonel Despard, and the rest of them, at that meeting at the Flying Horse, you might hesitate how to explain and satisfy your minds, what it was that could induce colonel Despard to enter into such a plan; where he was to find those resources of strength, that could encourage him to undertake, or enable him to execute, the dreadful objects of this conspiracy. Yet when you look back to what precedes that meeting, when you find from all the witnesses, that as far back as May or June, meetings were had at almost every alehouse in the metropolis; that a plan was formed to unite persons into an association, the objects of which were stated darkly, but sufficiently to enable you to understand their meaning, and to interpret the paper itself; that they were sworn to the engagement contained in this paper, and which, in the form of an oath, binds the parties to secrecy in respect of that engagement; when you recollect and consider this, then every doubt, I apprehend, must be removed.

With respect to the paper, I will leave that very much to your own construction; I will only say this upon it, that it undoubtedly means some material alteration in the state; some restoration of rights not to be obtained peaceably, quietly, or in any constitutional manner, else why make a provision for the families of those heroes who were to fall in the contest? If it did not contain mischief; if it did not contain something seditious and dangerous to the state, why bind the parties to this union, to secrecy? What that is, if there be any ambiguity, any thing that wants explanation, you have it expounded by the best possible mode of expounding any instrument, by the conduct and by the declarations of colonel Despard himself. They meant to obtain an equalization of their rights; they meant to obtain it by force; they swore each other to secrecy, and having done that, they stated what were the specific objects. They must have the Tower; why? because it would afford an arsenal of arms for those who were not armed. They must have the Bank; why? because it would distress and ruin the country, and would furnish them with that money with which they were to pay their people. They were to destroy the king: and these are the objects which are almost alluded to in the paper itself; this was the contest in which a provision was to be made for the heroes that fell. For what is an equalization of rights but an abolition of government, a destruction of the monarchy, and necessarily of the monarch himself? that is stated upon the face of the paper, darkly indeed, but

it is so expounded by the conduct of these people, that it can leave no doubt upon your minds, as to the true construction of it. Then look to their conduct; they have been busy at these meetings in seducing soldiers; they have been swearing people of every description, and you will find that the most active among them are the friends of colonel Despard, the persons taken up with him at the Oakley Arms, the persons with those very papers which were to be the bond of union found upon them. This surely does so connect these men—every part is so consistent—that it can leave no doubt upon the mind of any rational man what their purpose was; their purpose was that which they declare; their means of effecting that purpose, were by the seduction of the soldiers; and when you recollect, that in the year 1780, a rabble, a mob, unarmed and undisciplined, had the uncontrolled dominion of London for three days together, consider what would have been the effect of three minutes triumph of such men as colonel Despard and his soldiers, united for such purposes, and aiming at such objects as are proved in this case.

But you are told, that you are not to believe this charge, because it is proved by accomplices. Now, before I make any observation upon that subject, I think I cannot stand upon better ground than by stating the opinion of lord chief justice Holt, whom I have before quoted; his doctrine is expressly in point to this case; it was upon the same trial that I before mentioned. I shall state it with great confidence, as containing the law of that court, and I do it with the greater confidence, because I know from a recent instance it has the concurrence of this court; but as I am speaking in the hearing of the noble and learned lord, to whose charge I am alluding, I dare not say any thing more upon that, than that I wish upon every account you had been present to have heard it.

Lord chief justice Holt, on the trial of Charrock, King and Keyes, which was, as I told you, the trial of three persons upon an indictment of high treason, in what is called the Assassination Plot; and which case was proved principally, if not entirely, by accomplices, and when the objection was made to the evidence, upon that ground, lord Holt, in summing up to the jury, states this, and I beg your attention to it, because you will find it in the circumstances very much corresponding with some parts of this case, and in the reasoning applicable to every part of this case; he expresses himself thus: "But then there is another thing that is objected against the evidence, and that is as to the fairness and credibility of it, because the witnesses by their own acknowledgment are involved in the same crime, and therefore cannot be good witnesses against others. Now as to that objection I must tell you first, that witnesses under these circumstances are good legal witnesses, but their credits as in all other cases, are left to your consideration."

Now, gentlemen, observe this, for this was delivered by lord Holt, containing the sentiments of the very learned court I described to you. "But secondly, as to the weight of this objection against their credit, you may consider that traitorous conspiracies are deeds of darkness as well as of wickedness, the discovery whereof can properly come only from the conspirators themselves; such evidence has always been allowed as good proof in all ages, and they are the most proper witnesses, for otherwise it is hardly possible, if not altogether impossible, to have a full proof of such secret contrivances; such discoveries are to be encouraged in all governments, without which there can be no safety, and though men have been guilty of such heinous offences in being partakers or promoters in such designs, yet if they come in and repent, and give testimonies thereof by discovering the truth, great credit ought to be given to them, for such evidence was ever accounted good; besides, as to two of them which were the first, that discovered, before they were apprehended, or suspected themselves to be in danger, and therefore do not swear to save their own lives, but resolved upon it to save the life of the king."*

Now what was the case of Windsor? before any suspicion fell upon him, you find he came forward and gave his evidence, and in consequence of his examination, two other soldiers, Blades and William Francis, were taken up; he charged them with being parties in the conspiracy; they, by their evidence, acknowledge the truth of it, confirming, as far as their evidence goes, the testimony of Windsor himself. We have proved in this case, other material overt-acts; the attempting to seduce soldiers; the swearing in of soldiers; the keeping papers in their pocket with that view; all these have been proved: but I am drawing your attention to this more immediate overt-act of an attack upon the king's person, and which is completely proved, and is clear of all construction and all difficulty, and as it goes immediately and directly to the point charged in this indictment, I fix upon that overt-act, which is proved at all these meetings, and which, though proved by accomplices, yet is so confirmed by other witnesses and other circumstances, that you cannot disbelieve it. Lord Holt tells you, that their evidence has always been accounted good, and that otherwise it would be impossible to have full proof of such secret contrivances.

Gentlemen, what then is the objection to an accomplice? The objection to an accomplice, as lord Mansfield stated it, is an objection in the scale against his credit, to be balanced by the matter of his evidence, by the manner of his giving it, by the proof in support of his evidence, and by that which contradicts it. Let us try these accomplices by

* See Vol. 12, p. 1454.

that criterion. Look to the evidence of Emblin as to the matter of it; have not he and Windsor—persons perfectly unconnected with each other, for they never met before they were at the Flying Horse, at Newington—have not they in the material parts of this case given precisely the same account? what was the manner of Emblin in giving his evidence? I am sure it was given in that quiet, modest, cautious manner, that entitled him to credit in this court. He is called an accomplice. I doubt whether that is his description. I think he was a weak man in going twice; but it does not appear that he entered into the conspiracy. But, admitting him to be an accomplice, he speaks to those facts which none other but accomplices can speak to; and in every circumstance in which he can be confirmed by other witnesses, he is strongly confirmed and corroborated. What are the facts which Emblin and Windsor speak to? they speak to the seduction of soldiers; to meetings at the Flying Horse, at Whitechapel, and at the Oakley Arms. Are they not confirmed in all these facts; in the one by the landlady, in another by Campbell and Dean, and in the last by the persons who took colonel Despard and his associates into custody? What is the account given by colonel Despard's counsel? What reason has been assigned by them for his resorting to these obscure places, and living in this low company? they have not attempted to explain or to account for it, it would have been vain to have attempted it, they have been prudent in abstaining from it. But does not this confirm the evidence of the accomplices? and how completely does that evidence stand uncontradicted?

Emblin and Windsor both swear precisely to the same facts: I mean with the variation which is always found in the case of truth. Now, I ask you, what on earth could induce Emblin to invent a charge of a conspiracy, a charge of high treason against colonel Despard, whom he never saw but twice in his life, involving himself in the same treason? What could be his motive for it? None has been assigned; none could be assigned. If a murder or a robbery has been committed, and a suspicion falls upon several, one of the persons suspected, influenced by the hopes of life, or the fear of death, might falsely charge another with that crime, which he himself had committed; but, if no murder was committed, if no robbery had happened, is it possible that such a perjury could be committed? That Emblin should invent this conspiracy of high treason to criminate colonel Despard, and involve himself in the same crime is so unnatural; that Windsor should concur with him in the account he has given is so impossible, that it cannot be believed; and there is no proof or circumstance to raise such a presumption: then look to the manner and the matter of their evidence, and they are entitled, I say, to credit; they speak to those

facts which can be known only to accomplices, they must be supported collaterally to entitle them to credit, and in this case every circumstance has corroborated their testimony. The papers that have been produced, the other witnesses that have been examined, and every fact capable of other proof, has been so proved; and although there were sixteen persons liberated at the Oakley Arms, not one has been called to contradict them. There was one circumstance at the Oakley Arms I would just mention; upon their detaining colonel Despard, he resented it, desiring to know why he was detained there, and said to those who were present—"One and all follow me;" upon which they all went towards the door, obeying his order, and showing the influence of colonel Despard over these people.

This is the case alleged and proved against the prisoner; now let us consider what is the argument that has been urged in answer to it. You are told that independent of the objection to the witnesses on account of their being accomplices,—and which I trust I have sufficiently and entirely removed,—that this plan is so wild and extravagant that you cannot believe it. The wildness and extravagance of a plan may lead to its discovery and defeat, but by no means disproves its existence: the projects of desperate men are always wild and extravagant, at least they will appear so to men of your description, prudent and careful men, or may be made to appear so by the abilities of the learned sergeant, who made the observation; but I confess I see nothing wild or extravagant in any part of this plan. Is it wild and extravagant to attempt to corrupt the soldiers, to seduce the privates of those regiments, which are most immediately about the king's person, from their duty and allegiance; to prevail upon them to turn those arms against the king's life which were entrusted to them for his security, his honour, and protection? The success of the attempt is an answer to the observation of its extravagance; how far indeed their success had gone we know not: if we are to believe colonel Despard and John Francis, it had been carried full far enough to accomplish every object of this dreadful conspiracy. I hope and trust that that is an exaggerated account; but I am sure that if it be so, it is to the fidelity of the soldier, it is to his attachment to his king and country, it is to his gratitude to that public which has upon every occasion recorded his services with honour, and requited them with generosity; it is to that, and not to the want of activity, not to the want of indefatigable pains and industry on the part of colonel Despard and those associated with him, that this corruption had not pervaded every rank of these regiments. Is it wild and extravagant,—conceiving as they did, that they had the soldiers with them,—having in view the taking of the Tower and the Bank? Is it wild and extravagant to attempt publicly to assassinate the

king? I hope and trust in God, that such an attempt, in every instance as in this, may prove abortive; that the same Providence which has so often averted the blow, will continue to protect a life dear and invaluable to every man who has a spark of public or of private virtue, who has an interest in the welfare of his country, who has a respect and value for the most moral and exemplary character that ever sat upon our throne. But I ask you, whether with these views, and with these expected resources, it is extravagant or wild to make this attempt? I do believe that no event could happen, which would occasion so universal a despondency, so general a panic, distrust and consternation, as that dreadful calamity. I do believe that if men could work themselves up to contemplate that event without horror, to execute that crime without remorse; if having "well weighed the matter within them, they could find their hearts callous," it would facilitate the accomplishment of the rest of their design; they might avail themselves of the dismay and confusion to seize upon the Tower, to seize upon the Bank, and whatever else of misery or ruin they had contemplated against their country. In what then consists the extravagance of this plan, but in the extravagance of its cruelty, its heinousness and enormity?

These are the observations that have occurred to me upon this case; and I hope and trust, that in making them I have said nothing in which I am not perfectly justified by the facts and circumstances on which I have observed. I am sure I ought not, and I trust I cannot feel any other interest or wish in this matter but that which I entertain in common with you, and with every honest man—a wish that justice may be done: that the innocent may not suffer, that the guilty may not escape—a wish that the prisoner at the bar may feel the weight of truth only, and that he may know that nothing can hurt him but his own guilt. This I am sure will be the result of this trial, and the effect of your verdict; and, weighty and important as is the duty you are to discharge, I am convinced that with the great assistance you will receive from the Court, you will be enabled to discharge that duty satisfactorily to your own consciences, and satisfactorily to the country. A more important trial I believe never came before a jury; for if the account given by the witnesses on the part of the crown be in the material parts of it true; if it be true that this conspiracy, with these objects has existed; if it be true that colonel Despard has taken the active part in that conspiracy imputed to him by this indictment, and you have heard how that has been proved, and how entirely that proof stands uncontradicted; if this be true, and if he should escape the hand of justice, there is no protection in the laws of this country for the king's life, none for the safety of the public; they are both intimately and inseparably connected,

and the existence and the preservation of both must be exposed to the most imminent hazard and danger. I state this, not for the purpose of exciting your feelings, but of engaging your attention. If it were my duty, I could resort to a thousand topics in this aggravated case to excite your horror and indignation, but that is not my duty, and I purposely abstain from it; and indeed, gentlemen, I feel that if this had been a conspiracy against the life of the worst, instead of one of the best kings that ever sat upon our throne, in most of the considerations that belong to it, in most of the dreadful consequences to follow from it, the effects would have been precisely the same.

There is one circumstance more I would not pass over in silence, and that is the evidence produced by colonel Despard to his character; he has brought two of the most gallant men in the world in support of that character. Good God, what a falling off is here! That he who had the society and friendship of lord Nelson, sir Alured Clarke, and the good opinion of sir Evan Nepean, three as valuable and as respectable men as live; that he should quit them, and associate himself with some of the worst traitors (if the evidence be true) that exist; that he should quit the society and pursuits of men of honour, to seek those of low persons at obscure alehouses, living with private soldiers and the most depraved and the worst of mankind, is a part of the case that excites one's regret and pity.

There is another part of the case that I would not have ventured to have spoken to, if the learned sergeant had not made it necessary. He has told you that colonel Despard has been confined three years in a prison under a suspicion of treason or sedition; whether that has made him more or less apt to be engaged in this conspiracy, and in the execution of it, you will best judge; I cannot help thinking that the learned sergeant has described his client as

“—————A man
“Whom the vile blows and buffets of the
world
“Have so incensed, that he is reckless what
“He does to spite the world.”

I submit to you, gentlemen, that all the evidence that has been given in support of the character of colonel Despard only proves him at one part of his life to have been a respectable man, always to have been a bold and enterprising man, and the rest may be accounted for perhaps by the habits he had contracted during an imprisonment of three years; whether that might not produce feelings of resentment and disappointment, which might work him up to this dreadful resolution, you will best judge, but I do not rely upon it, I only state what I have said in reply to the observations of the learned sergeant; I rely upon the facts which have

been proved, and which stand uncontradicted.

Gentlemen, in what I have stated to you, I have been urged by an anxiety only to engage your attention, to beg that of you in which I am sure I shall not be disappointed,—that you will carefully and attentively weigh and consider the whole of this case, and the evidence that has been produced. That evidence will be stated to you with the greatest accuracy, fairness, and perspicuity by the noble and learned judge who presides here, and whose assistance will be a treasure to you upon this occasion, as it will enable you to ascertain the truth, and to administer justice in a trial of the last importance to the prisoner and to the public.

SUMMING UP.

Lord Ellenborough.—Gentlemen of the jury; the arguments of the learned counsel, as well as the evidence on both sides, being now closed, it remains for me to discharge a duty which I fear may be somewhat irksome and painful to you in the course of its execution, considering the vast quantity of evidence given in this cause, which it will be necessary for me to detail, and to comment upon. Recollecting, however, with what minds and dispositions you must have come prepared for the discharge of your duty, and how little I am sure you value your own convenience and time, when put in competition with the due execution of that duty, I trust you will receive with patience and attention the means it may be in my power to afford you towards the due and perfect execution of it; and which means will consist principally in a correct statement of the evidence itself, and in the application of some observations to it in the course, and at the close of such statement.

The crime with which the prisoner is charged is the crime of high treason, in respect of which he is charged with three distinct and substantive species and heads of that crime, one of them, viz. that of compassing and imagining to put the king to death, founded upon and couched in the terms of the statute of the twenty-fifth of Edward the third, which statute is declaratory of the ancient law of treason as it then stood, as well as introductory of certain new provisions in addition thereto; and the other two species and heads of treasons, viz. conspiring, compassing, devising, and intending the imprisonment and restraint of the person of the king, and conspiring, compassing, &c. to deprive and depose the king from the style, honour, and kingly name of the imperial crown of this realm, are expressly made such by the statute of the thirty-seventh of his present majesty; whether they were not equally so before, i. e. as overt-acts of treason, under the statute of Edward the third, is immaterial to consider upon the present occasion, as they are now unquestionably specific treasons by the immediate letter of the statute of the thirty-seventh of his present majesty. Of each of these

several species of treason there are eight distinct overt-acts charged against the defendant, and the same kind and description of acts are specifically and successively charged and assigned in this indictment as overt-acts of each of these three several heads of treason.

The overt-acts, or in other words the open deeds, by which the treasonable purposes imputed to the defendants are alleged to have been manifested and attempted to be carried into effect by them are, first, the conspiring to seduce certain soldiers named in the indictment from their duty and allegiance to his majesty, and to unite with the defendants in a traitorous attempt to subvert the government, and to destroy the king. Secondly, the conspiring to administer to certain persons oaths and engagements intended to bind them to become members of, and to be assisting in certain traitorous associations and confederacies formed for the purpose of subverting by arms the government, and deposing and destroying the king. Thirdly, the obtaining, procuring, and keeping in their custody cards and papers containing the form of oaths and engagements to the above effect, with intent to administer the same for the purposes above mentioned. Fourthly, the actual administering of such oaths to certain persons for the same purpose. Fifthly, the meeting consulting, conspiring, consenting, and agreeing, by laying in wait, and by attacking the person of the king, to assassinate, kill, and murder his majesty, and threatening, proposing, and consulting of the ways, manner and means, and of the time and place of attacking his majesty, in order the more easily to assassinate and kill him. Sixthly, the meeting, treating, consulting, and conspiring with force and arms to attack the Bank of England and Tower of London, and to raise insurrection, rebellion, and war against the king within the kingdom. Seventhly, the meeting, consulting, and agreeing to procure arms, ammunition, &c. in order the more effectually to attack and assassinate the king. The eighth and last overt-act,—consisting in a similar conspiracy to attack the king when he should next go to meet the parliament; to attack and seize the Bank of England, the Tower of London, and the arms therein;—that the conspirators should arm themselves therewith to destroy the king's force, and to stop and detain the mail coaches, as a signal and notice of their proceedings to other parts of the kingdom, and as an incitement to other traitors to raise and make insurrection, rebellion, and war within the kingdom.

The principal mischief intended to be effected, and the main scheme and object of the design imputed to the conspirators by this indictment, is, you will observe, the destruction of the person of the king, his restraint and imprisonment, or his deposition from his royal state and dignity; and all or some of these treasonable objects are stated to have been attempted to be effected by means of the vari-

ous consultations, meetings, seduction of soldiers, and the like, which I have been detailing to you from the indictment, and which have been the subject of the evidence laid before you.

Gentlemen, before I state the evidence adduced on the part of the Crown, in proof of the overt-acts laid in the indictment,—which you already sufficiently understand to mean certain open deeds of the party, done in prosecution of the treasonable purposes imputed to him, and manifesting the existence of such purposes,—I think it fit to state a word or two upon some of the topics which have been touched upon on the part of the defendant, as to the quality of the crime imputed to the defendant, and as to the nature of the proof by which the charge thereof is supported. It has been urged that the crime consists only in words, and that words are not of themselves overt-acts of high treason. If it be said that loose words, referable to no particular design, words merely calumnious, or seditious words, expressive of an irritated and angry mind, and of sentiments highly indecent and criminal in a subject towards his sovereign, but words neither indicating or conducing to the execution of any definite purpose of a treasonable kind on his own part, nor persuading or exciting others to concur in the execution thereof on theirs, I readily admit that loose words of this description are not to be considered as constituting overt-acts of high treason, and that it would be too much to infer from the random and careless, though highly blameable use of expressions of this kind, so mischievous and abominable a purpose as the destruction of the King. But if words of this kind are used at meetings held for the purpose of forwarding designs of a treasonable nature, and if they are addressed to persons with an intent to excite and to confirm them in the prosecution of measures which have for their declared object the assassinating or deposing of the king by force and arms, and where words are the immediate vehicle by which treasons such as these are communicated, and by which they are sought to be carried into full completion and effect, it never was, since the promulgation of law in this land, by any one lawyer, ever doubted that words of this nature, uttered for such a purpose, at such meetings and consultations, and being themselves the very instruments and means of exciting other persons to take part in measures which had for their end and object the personal destruction of the king, were in their very nature and essence the clearest and most absolute overt acts of high treason that can be stated. This point never yet admitted of a doubt; it never was questioned—it never can be so.

Gentlemen, another subject has been discussed before you, respecting the credit due to the testimony of accomplices, which is certainly a matter of nice and delicate consideration. That an accomplice is a competent

witness, and that, if he is believed, you may upon his evidence, found the most important conclusions, there can be no doubt. You see him stand before you sworn as a witness: if he had not been competent, that is if he were a person who stood under such circumstances as to be wholly unworthy of credit, it would have been a dereliction of duty on the part of us, the judges, who now sit here; it would have been a gross dereliction of duty in those, who have, on former occasions, occupied similar seats in other courts of criminal justice, when witnesses of the same description have been called before them, not to repel such witnesses at once from the box on which they were about to be sworn, and to tell the country that they ought not to be received; but they are and always have been received. Their testimony, however, is, at the same time, to be received and acted upon with an attentive and scrupulous consideration of its merit and value; in each particular instance, they come sullied with some degree of contamination,—not all, indeed, in an equal degree;—contaminated, however, in some degree, by a participation in the very crime they impute to others; but the witness who comes thus *prima facie* contaminated, may be so confirmed by the consistency and clearness of his own narration, and still more by its conformity to and coincidence with the substance of the testimony delivered by others, not likely to have conspired with him in the crime itself, or to have had the means of concerting and colluding with him as to the matter of his testimony, and still more, if such a witness is found to be confirmed by a variety of collateral and independent facts and circumstances, involving the names, characters, and transactions, of multitudes of persons, and if, at last, the whole of his testimony should appear to be broken in upon by no one fact of contrary testimony, during a discussion and hearing occupying so many hours as this has done, and in the course of which the names of so many persons have been brought forward as actors in very extraordinary scenes, described as having passed in so many places,—I say, if the entire narrative as to persons, places, and things, not in itself inconsistent or improbable, should ultimately appear to be falsified in no instance whatever,—in such case, a person originally standing under some degree of doubt and suspicion from the nature of his situation and from the quality of his testimony, becomes, at last, entitled to be believed in the fullest manner, accredited and confirmed as he then is in the manner of his testimony, by such a body of collateral evidence, as I have, by way of supposition, assumed, and you may probably consider as having been in fact given in the present instance.

In the case of Champock, one of the conspirators in the Assassination plot in the time of William the 3rd, which has been cited to

you by the counsel for the crown, lord Holt says, that "conspiracies are deeds of darkness as well as of wickedness, the discovery whereof can properly come only from the conspirators themselves;" and that the evidence of accomplices "has always been allowed good proof in all ages, and they are the most proper witnesses, for otherwise it is hardly possible, if not altogether impossible, to have a full proof of such secret contrivances;" and, he adds, "such discoveries are to be encouraged in all governments, without which there can be no safety." Besides, the connexion and communication with the treason may be different in different individuals; in some it may be such as only to constitute a case of misprision of treason, and which possibly may be the proper description of crime applicable to the case of Emblin; or it may be treason, if the concealment of and apparent concurrence in the acts and proposals of others was such, as to afford, on his part, actual aid and furtherance to the treasonable measures proposed. Such conduct would in that case, implicate him in the crime, as a principal in the high-treason, and not merely as a party guilty of misprision, by concealing the objects of a traitorous conspiracy, after full knowledge of them.

But there is another class of persons, which cannot properly be considered as coming within the description, or as partaking of the criminal contamination of accomplices; I mean persons, entering into communication with the conspirators, with an original purpose of discovering their secret designs, and disclosing them for the benefit of the public. The existence of such original purpose on their part, is best evinced by a conduct, which precludes them from ever wavering in or swerving from the discharge of their duty, if they might otherwise be disposed so to do; as in the case of Windsor, who bound himself to his duty by an early communication to Bownas, and received from him directions as to the steps which he should afterwards pursue, if he entered into and continued in the apparent prosecution of the purposes of the conspiracy; with this view and object he is not an accomplice, although, perhaps, a great degree of objection or disfavour may attach to him on other grounds, for certainly no person of very delicate feelings (however necessary it may be in some cases), would choose to go on from day to day, apparently forwarding the purposes of a conspiracy, in order that he might afterwards disclose it and bring the parties concerned in it to justice; but still, whatever may be the merit or demerit of this species of conduct on other grounds, it is not, taking the fact as Windsor has stated it, the case of an accomplice.

Having made these observations to you, as to the nature of accomplices, and the circumstances under which accomplices may justly be considered as credible witnesses;

and which observations you will of course apply, as far as they are justly applicable to the witnesses in question; believing their story, if it is consistent and probable in itself, and confirmed by the testimony of others, and still more, if much of that confirmation be derived (and it will be for you to say whether it is not so in the present instance), from pure and unsuspected sources; and disbelieving it if it be inconsistent, improbable, and unconfirmed by other evidence: I will once more state to you, that the principal overt-acts to which you will direct your attention are these—meetings and consultations—the seduction of soldiers—and the administering of unlawful oaths—for the purpose of carrying into effect a projected destruction of the person of the king, or his personal restraint and imprisonment, or the deposal of him from his royal state and dignity, or for all these treasonable objects collectively. It is for you to consider whether the prisoner has been concerned as a party in all or any of these traitorous acts.

The first witness called before you is John Stafford, chief clerk to the police-office at Union-hall; he says, that in that character he was on Tuesday, the 16th of November, directed to go to the Oakley Arms, in Oakley-street, in the parish of St. Mary, Lambeth; that he went about nine in the evening, with John May and Richard Bethel Lloyd, two of the officers to whom a warrant was directed; that they met the Bow-street officers, whom Sir Richard Ford had directed to attend upon that occasion, by the wall of the Asylum. He says, "We went together to the Oakley Arms, Lloyd, with a party, attended in a room below stairs; Rivett, May, and I, went together into the club-room up one pair of stairs: when we went in we found about thirty persons there; Thomas Phillips told me his name was Jackson: he afterwards said it was Phillips. There were William Lander, John Lambert, Abraham Bailey, John Doyle, and John Wood. I asked Wood where he lived, what business he was of, and whether he was a soldier; he said he was not now a soldier, he had belonged to the 10th regiment; he said he was a carpenter, and not a soldier. John Francis, Thomas Newman, Daniel Tyndall, Edward Marcus Despard, Samuel Smith, Thomas Broughton, John Emblin, and John Connel, were also there; Graham and Macnamara, who are named in the indictment, were not there. They appeared mostly to be working men, some of them soldiers. John Francis, Newman, and Wood, were soldiers; none of them had their regimentals on; one had a sort of regimental jacket; I went to the fire place, and looked about; I desired them to keep their seats; they were a little alarmed; we went in quick; I desired the officer to search them: I saw May find a paper upon Thomas Phillips. One of the patrol came up, and said, here is a man who will not be searched; I was shown to Despard as that person. Rivett

pointed out the prisoner, and said, that is colonel Despard; no other person there had the appearance of a gentleman but him. Colonel Despard asked what was our authority: I told him we had a warrant; he asked to see it? I desired May to produce it. The warrant was held out to him where the signatures of the magistrates were. It was signed by Mr. Carpenter Smith and Mr. Broadley. Colonel Despard seemed rather angry, rather indignant. I searched him minutely: I found nothing upon him; he had a silk umbrella, in his hand." Gentlemen, you may recollect that this umbrella forms a part of the description of colonel Despard, wherever he is proved to be present in the course of these transactions. "It is a silk umbrella, with an hooked yellow stick; an umbrella that is also used as a walking-stick. I saw another paper in the hands of Samuel Taunton, one of the patrol; I did not see where it came from. I did not see any more found. I did not see Broughton searched. They were all taken into custody. I continued at the public-house till they were all sent away. I sent for coaches, and sent officers along with them to places of security for the night. After they were gone, Thomas Windsor, as I since find him to be, came there."

This Thomas Windsor, who, it is now suggested, wishes to throw off from himself, the blame of this matter upon colonel Despard, in order to screen himself, was not the immediate object of any blame, nor stood in need of any screen, for you observe he was not taken with the party; he came afterwards, and from the communication made to this witness, and his coming to the police-office the next morning, seems to have put himself in the way, and to have offered himself voluntarily to make that information and discovery which he thought it material to make, and which, if you believe his story, he originally intended to make, in consequence of his communication to Mr. Bownas. Stafford says, "I saw him come in dressed like a bricklayer or plasterer; there appeared to be some lime about him. He went into the tap-room, sat down, and called for a pint of beer and a pipe of tobacco. I had a long conversation with him. I desired him to attend at Union-hall the next day, and in consequence of that conversation, I took down his name and his place of abode, which he said, was in Weymouth-street, Newington; he said he was a bricklayer by business and a soldier in the guards. He attended the next morning before the magistrates by my desire; he was not taken up; he was examined, and produced another paper, similar to those found at the Oakley Arms; it is now marked No. 2. He said he knew the colonel; he knew James Sedgwick Wrattan, John Francis, and John Wood, then it was that Wood admitted he was a soldier; John Francis, at the same time admitted himself to be a soldier in the guards, in colonel Lambert's regiment, having, at the Oakley Arms, called himself a shoemaker; he

also knew Emblin, he said, and Samuel Smith. The prisoners were severally committed. He thinks the parliament met that very day, the 16th of November, and the king went to the House the week following, on Tuesday, the 23rd of November."

[The oath, No. 1, was then read.]

"Constitution and independence of Great Britain and Ireland; an equalization of civil, political, and religious rights; an ample provision for the families of the heroes who shall fall in the contest; a liberal reward for distinguished merit these are the objects for which we contend, and to obtain these objects we swear to be united. In the awful presence of Almighty God, I, A. B. do voluntarily declare, that I will endeavour, to the utmost of my power, to obtain the objects of this union, namely, to recover those rights which the Supreme Being has given to all men; that neither hopes, fears, rewards, nor punishment, shall ever induce me to give any information, directly, or indirectly concerning the business, or of any member of this society, or of any similar society, so help me God."

Gentlemen, this paper is found in the room; it will presently be for you to say, from the evidence which William Francis has given, whether the prisoner is not immediately connected with a similar use of this paper which appears to have been made by a variety of other persons whose names occur in this indictment; and whether he is not, from the circumstance of his acting and co-operating to the same end, his meeting for the advancement of the same purposes, namely, to seduce soldiers from their allegiance and duty to his majesty, and to associate others to the treasonable objects of that paper (and one of the overt-acts charged is, you will recollect, the administering this kind of oath), privy to and a party in all the treasonable objects, which that paper is calculated to promote. The oath, in its terms, is of the most dangerous tendency, and has a most mischievous object in view. Equalization of civil and political rights, cannot mean an equal right to the administration of law; that right every one fully enjoys at present: an equal right to the enjoyment of unequal portions of property, according as accidental circumstances may have allotted them to us; that right is also fully enjoyed at present: but it seems clearly to mean, the forcible reduction to one common level of all the advantages of property, of all civil and political rights whatsoever, and, in short, introducing amongst us that mischievous equality, which as far as it is attainable at all, has been considered, and perhaps very justly, as the bane and destruction of those who have endeavoured to establish it in another country. "An ample provision for the families of the heroes who shall fall in the contest." This contest does not mean a struggle for reform by peaceable and ordinary means, and to be effected in a parliamentary way by application

to the legislature. How can there be any heroes to fall in such a contest? It certainly points at a bloody conflict by arms, as the means or the result of that struggle for the equalization of civil, political, and religious rights, which it labours to promote by the abused sanction of an oath.

Having stated this equalization of rights as the object of the confederacy, and of the combined efforts to be made at the probable expense of life; it proceeds to bind the parties taking it, to the most inviolable secrecy, as to the objects and proceedings of that society, and not to give any information respecting them, or the members of that, or any other similar society. The means and the end are in this case of the same malignant quality and description, and would, if no more appeared, cast the darkest shade of criminality over all who should be found taking a part in the administering of such an oath; but if it should appear, that the persons actively concerned in promoting the use and adoption of this oath, are at the same time following up the mischief of it by practical endeavours to band together persons in a society and league to stop the king in his passage to the House, to seize his person or to destroy it; and if you can find by any express and unequivocal declaration on his part, that the prisoner, colonel Despard, acceded to these designs in their fullest extent; if he is found himself to have issued some of these papers (which he must be presumed to have done with knowledge of their import and effect, unless the contrary is shown by him, but which has not been attempted); if these papers were found in the room at the Oakley Arms, at an assembly of which he formed so principal a part,—it does form altogether a strong body of proof, if believed, that he co-operated and acted with the persons so assembled, and others, in the execution of such a design as the oath indirectly indicates, and his own conversation and language, if believed, expressly and directly declare; the oath and the assembly certainly reflect a strong degree of credit upon the testimony which imputes to him expressions which, if believed, establish the clearest overt-acts against him of compassing and imagining the death of the king.

Charles Bacon, one of the patrol belonging to the public office, in Bow-street, says he was present with Stafford and others at the Oakley Arms; he went up into the room; there were as many as thirty persons, or more, the prisoner was there; there were all descriptions of persons there, but no other person was there who had the dress of a gentleman but colonel Despard. It has been pressed in argument, and fairly pressed, that if colonel Despard was there for any other purpose than that which the prosecution imputes to him, it became him to assign and to prove the existence of such other purpose. Now, in the course of what has been urged

for him, have you had any reason assigned, or attempted to be assigned, why he should be found at all or any of these meetings, with persons of this class and description? The witness proceeds, "I searched Thomas Broughton: I found three printed papers upon him; I put my name, Bacon, upon the back of those three papers." Gentlemen, I need not trouble you with a recital of their contents, they are the same as the other I have read to you; they were printed in a very bad type, and do not appear to have been printed at any printing press, but rather seem as if stamped by separate unfixed letters, two or three at a time; he says two or three officers were sent out to get coaches. Colonel Despard was walking up and down the room, he addressed himself to the company in the room, and said, "*he wished to know why he was detained there?*" and said, "*one and all follow me;*" he went towards the door, and they followed him. Here the prisoner seems to address, direct, and give orders to them as a commander, and they are obedient to those orders; for he goes to the door, and the rest immediately rise and follow him. The witness says, "one of the officers went down out of the room, and desired some of the patrol to come up; they came up into the room."

Then numbers 2, 3, 4, and 5 of these papers were read and compared with number 1, and they all agree.

John May, another police constable, says, "I went to the Oakley Arms on the 16th of November, I went up with Stafford into the one pair of stairs room; I searched one Phillips, otherwise Jackson; I found a paper in his left-hand pocket (number 1); I know colonel Despard, he was in the room when I went." Then he enumerates the names of the persons as described by the former witnesses, and which it is unnecessary for me to repeat.

Samuel Taunton, a police constable, says, "I went to the Oakley Arms on the 16th of November, in the evening, with Stafford and the other officers; I went up stairs; I believe there were twenty-eight, or twenty-nine persons in the room; I searched a person of the name of Magree or Magrah; whilst I was searching him, I saw Joseph Hannah, one of the officers, pick up a paper from the floor, under the bench, exactly under where Magrah was sitting before I searched him; Joseph Hannah gave me the paper immediately, and I put my name on it; I marked it No. 6." This paper was the same as those before read.

Joseph Hannah, a police officer, says, "I attended with the other officers at the Oakley Arms, on the 16th of November; I found a paper under a stool, a man was sitting near there, who has been since discharged; I looked it over, and gave it to Samuel Taunton."

Gentlemen, the discharge of the other persons has been observed upon; but in answer, it has been said by the officers for the crown, that not having evidence that these persons

had attended at any prior meeting, and not being able to make out a case which in their apprehension would warrant the putting of those persons upon their trial, they had dismissed them; and in so doing the officers of government certainly did what was not only best in respect of the persons so discharged, but most advantageous to the present prisoners, who have had the opportunity thereby of producing so many witnesses to the innocence of the objects of the meeting, if they had chosen so to do, and had thought it for their interest so to have done: none of these persons, however, have been called before you as witnesses by the prisoner.

John Rivett, one of the constables belonging to Bow-street office, says, "I was at the Oakley Arms on the 16th of November; I saw colonel Despard after being there a little time; I knew him before."

The next witness is a very material one, and upon whose testimony there has been a great deal of observation.

Thomas Windsor says, "I am a private soldier in the grenadier company of the third battalion in the first regiment of the guards; I know colonel Despard; I know John Francis, who is one of the persons indicted. In March last I was with my regiment at Chatham; soon after their return I received some printed papers from John Francis;"—"Gentlemen, you will attend to this;"—"I delivered some of those papers to Mr. Bownas, of the Transport office, or the agent office. I communicated to him how I had received these papers; I left one in his possession; I received advice from him what conduct I should hold as to the persons I received them from." You observe he communicated with Bownas both as to the papers themselves which he received, and the manner in which he had received them, and took his advice as to the conduct he should hold upon the occasion. "John Francis said, 'the object was, to unite ourselves to overturn the present tyrannical system of government, to unite ourselves in different companies, and to get possession of arms.' John Francis applied to Thomas Blades, of the same company, and Blades was after that at a meeting held at a public-house at St. Giles's;—when Francis offered me the printed card, which was an affidavit; he bid me read it and kiss it; the first act respecting the cards and giving me some, was swearing me in; this is the usual mode of swearing in soldiers to be of this conspiracy. If the soldier to be sworn cannot read, the person bringing him reads the oath to him if he can, if not, some other person reads it to the soldier to be sworn, and then he kisses it. About a week after I was sworn in, Francis delivered me some other cards (one of which I delivered to Mr. Bownas) to distribute to whom I thought proper; he delivered them to me as to a person capable of the command of a company; one of the cards was, I believe, that on which I was sworn. Meetings

were held afterwards at the Brown Bear, in St. Giles's, and at the Ranning Horse, in St. Giles's; from sixteen to twenty, or twenty-five persons used to meet at those houses, principally Irishmen of a low class—labouring men. These meetings were held every week. There was a resolution come to upon the motion of a man of the name of Mack, as we called him, but his proper name is Macnamara; he proposed, at the meeting at the Ranning Horse, that we should change the public houses of meeting as often as possible, in order to avoid detection; his advice was adopted, and they afterwards met at the Bleeding-heart, in Charles-street, Hatton-garden; I attended at that meeting, John Francis was there; Thomas Broughton accompanied me to one of these meetings at the Bleeding-heart; there were about twenty-five persons attended there;"—"If the same persons did not always meet at these places, the conspiracy must have diverged and extended itself widely; twenty-five at one meeting, and allowing for a given proportion of alteration in the persons present at other meetings held at places considerably distant from each other, the gross number of persons implicated in this dangerous conspiracy would run to a considerable multitude;"—"the business there was to unite ourselves, and to raise subscriptions to pay delegates to go into the country, and to pay the expense of printing these affidavits, to overturn the system of government, and to destroy the royal family; these were mentioned in general as the objects of our meetings;—there were ten men in each company." Then he tells how these societies were distributed, and how the basis of that army was laid, which when afterwards fully combined and formed, was to execute these mischievous purposes to which their attention was, you will find, afterwards more particularly directed. "There were to be ten men in a company, and when they amounted to eleven, one of the eleven took the command as captain of the other ten, if he raised the number himself; the society divided itself into different divisions, the divisions were not fixed as to any particular number. There was a division in the Borough, one in Marylebone, another division in Spital-fields, and a division from Blackwall, and upwards towards the city. The oldest captain of fifty was to have the command of fifty; he was called colonel of that subdivision. John Francis and Macnamara told me they should appoint me as colonel of the Borough division; they called themselves colonels under the head-colonel or commander-in-chief: the Spread Eagle, in Mill-lane, is a house for a meeting of one of the subdivisions. I know James Sedgwick Wratten, who is indicted; the persons who composed the society in Mill-lane were chiefly persons discharged from the navy, or people used to the great gun exercise; Wratten called himself colonel; the Hoop and Ran, in the Mint, in the Bo-

rough, is the house where Wratten held his division, and assembled his people. I know the Oakley Arms; I attended there on Broughton's summons; it was on a Sunday, about seven or eight weeks before I gave my evidence; there were Arthur Graham and William Lander there, and to the amount of about half a dozen more; nothing particular was done there; Broughton and I went to a man of the name of Hutchison, on lord mayor's day; we were together at the Oakley Arms, and the son of the man went up stairs, and Broughton was called out to the door to me. The room was almost full, I did not go in, there were about thirty there; I had been at a meeting at the Windmill, in Windmill-street, and looked in at this place on my return. Broughton said, on the 9th, that they had gathered fifteen shillings and sixpence, and it was to pay for delegates going into the country, and to pay for some more of the affidavits being printed; Broughton produced some of these affidavits, I took one, I gave him a shilling for it; there were about sixteen at the Windmill, in Windmill-street, and thirty at the Oakley Arms; the business transacted was the same as at the other meetings—encouraging people to get as many recruits as they could, asking whether any members would take a card and bring men, and cards were produced for the purpose of furnishing those who were disposed to take them. John Macnamara was at the meeting in Windmill-street; when the cards were printed, they were to be distributed in the country by the delegates, who were appointed for that purpose. Broughton said every person must pay a shilling for his affidavit, and what was more than was expended in printing was to be paid to the delegates. I was at a meeting at the Hoop and Ram in the Mint, a fortnight or more before the meeting on lord mayor's day. The same plan and the same object was pursued at all these meetings; there was no difference; Broughton was present there, Wratten was in the chair; John Wood, a soldier of the first regiment was there; Magrah, Newman, and John Blades were present, and several other persons. A meeting was held at the Bleeding Heart, about six weeks before the meeting at the Hoop and Ram in the Mint; that was on a Sunday evening. There was a meeting appointed at the Bell, in Tower-street; I was ordered to attend, but it being in the time of evening service the landlord of the Bell would not let us in; we went to the Canteen, the sutling house in the Tower, they call it the Stone Kitchen; this was on a Sunday, about three weeks or a month before lord mayor's day; there might be about twenty or twenty-five met in Tower-street; when they found they could not get into the Bell, in Tower-street, about thirteen or fourteen went to the Tower, the rest dispersed; they were planning that some of them should go down to Woolwich, to the Warren, to try to get some

people belonging to the Warren to unite with them. On the 12th of November,"—These later dates are material for your attention; indeed all that passed upon the 12th, the 15th, and the 16th of November, is particularly material.—"On the 12th of November I was at work at No. 16, in West-street, West-square, setting up a copper; Broughton called upon me there; he said, 'Windsor, come with me to the Flying Horse, in Newington, I will introduce you to good company.' The Flying Horse was a house I used, where I have my regular beer from; I told him I could not neglect my business, that I had a wife and family to maintain; he said, 'Damn you, you must neglect your business, I neglect mine.' I went with him there; I went into the tap-room; Broughton said don't stop there, come along. Then I followed him into the parlour; I found a gentleman there who called himself colonel Despard; the prisoner is the person." This is the first time this witness speaks to the presence of the prisoner. He says "the prisoner at the bar was then a stranger to me. Broughton said, that is colonel Despard. I made my obeisance to the colonel, and took my seat. Emblin was there at the same time, a person of the name of Samuel Smith, and Arthur Graham. Broughton told Graham that was colonel Despard. Graham and colonel Despard fell into conversation for some minutes, and then Emblin entered into conversation with colonel Despard." You will see how his account tallies with the account given by Emblin afterwards, respecting this meeting on the 12th of November, and the conversation he there had with colonel Despard; and you will also remember that some of the circumstances, which are very material, both in the testimony of one and the other, are overheard by the landlady, who states herself to have overheard a most important part of this conversation. The witness proceeds: "I did not hear the conversation; I saw Graham offer a piece of money to colonel Despard, which he refused. Then Graham said, you shall have something to drink then, and he ordered a shilling's-worth of brandy and water. I heard Emblin recommend to Despard that there ought to be a regular organization in London. Despard said, no; a regular organization in London was dangerous, as it was under the eye of government. He said a regular organization in the country was necessary, and he believed was already general. He said the people were every where ripe, and anxious for the moment of attack; and I believe this to be the moment. They are ripe, particularly in Leeds, in Sheffield, in Birmingham, and every capital town in England."

Now, gentlemen, if you believe this witness, or if you believe the evidence of Emblin, or if you are not disposed to believe either of them without confirmation, if you believe the landlady who overheard those expressions

about his heart being callous, you will consider how it is possible to ascribe to these words any other interpretation and tendency, than that which is ascribed to them, when they are stated as overt-acts of high treason upon this record. Colonel Despard says, "I have walked twenty miles." The other witness to this conversation varies the expression a little, and says, "I have travelled twenty miles to-day, and the people are every where ripe where I have been. He said the attack was to be made on the day his majesty should go to the House, and his majesty must be put to death. That the mail coaches were to be stopped as a signal to the people in the country, that they had revolted in town; that was principally what he said at that moment. In the course of the evening he afterwards said, Windsor, Wood has mentioned you to me. Broughton frequently called me by the name of Windsor; he told me he had formerly heard of me from Wood." And considering that Wood appears to be very intimate with colonel Despard from the whole of the evidence here given, it is more natural that he should unbosom himself thus, than if he had been conversing with a man who did not come accredited to him by the previous recommendation of a person in his confidence. "Despard said; "I should be glad if you would meet me on Tower-hill on Monday morning at half past eleven o'clock, and bring with you four or five intelligent men, to consult on the best method of taking the Tower, and securing the arms. I promised to meet him there. He said afterwards, at the time he was saying the people were ripe, *I have weighed the matter well, and my heart is callous*; this was after he said his majesty must be put to death. Graham paid for the brandy and water; Emblin gave the girl that came into the room two pence or three pence." This circumstance is confirmed by the evidence of the landlady and Emblin; "and Emblin said he would have a kiss when he came again; we were there about two hours and a half; he said an organization would be necessary. On Monday, the 15th of November, I met colonel Despard at the Tiger, on Tower-hill; I took Winterbottom there according to an appointment made the Friday before. I was there at the time appointed, which was half past eleven; the colonel came about five minutes before twelve. The colonel came alone, I and Winterbottom were in the tap-room when he came. The colonel beckoned me with his head to go out; in consequence of this I did go out; there were four or five soldiers in the tap-room; he said, Windsor, do these people belong to us. I said only Winterbottom belongs to me, I said yes first of all that they did belong to us, but in fact only Winterbottom belonged to us. He said, bid them come along with me. I said there is but one I can depend upon, that is Winterbottom. Says he, do you take one direction, and I another, as you are well

known and in your regimentals, and meet me opposite Whitechapel church. Winterbottom, I, and the other soldiers had our regimentals on. I returned, and went with Winterbottom opposite Whitechapel church; the colonel walked gently before us till we came to Whitechapel church; he bid me go to the opposite house, pointing to a public house the Two Bells, and said he would go and find a man who could give him some information respecting Lynch, who was a soldier, who had been in the third battalion of the first regiment, but was then discharged. I went into the public house; he asked me if I had money, I said enough to buy a draught of porter. I remained half an hour before the colonel came; he brought one Heron, a discharged soldier of the first regiment of guards. The colonel said he brought this man with him, he could not find any thing of Lynch; he believed Heron had seen Lynch the week before, and he believed him to be still in the regiment. I was desired by the colonel to inquire after him at the Flying Horse on the Friday evening, and the colonel said I might trust him with any secret I had. He said this to me, having beckoned me out of this house the same as he did at the former house. We walked up and down Brick-lane; Winterbottom, Heron, the colonel, and me. While we were walking there, the colonel said, Windsor, we are deceived as to the number of arms in the Bank; there are but six hundred, and they have taken the hammers off, to render them useless, as they must have been apprised of our intention. We then went to the Coach and Horses in Whitechapel; colonel Despard, Winterbottom, Heron, and myself." This is a place where there were other persons present, where you recollect that the landlord comes in, where there was a soldier of the name of Dean, and another soldier of the name of Campbell. This is a case in which the story is capable of receiving some confirmation, and if it does so in this instance from the other witnesses who are capable of giving any account of the same transaction, it certainly accredits to a considerable degree the evidence of this person, even if he had stood more directly before you as an accomplice than he does, considering he has stated in effect, that he entered into this business with an original purpose of discovering it, and that he did so to Mr. Bowmas at the instant he entered. "We then went to the Coach and Horses in Whitechapel, Winterbottom, Heron, colonel Despard, and myself. We had two pots of porter and some bread and cheese; a twopenny loaf and a quarter of a pound of Gloucestershire cheese; the colonel gave the boy money to buy the bread and cheese. The colonel said to me, Windsor, do you know the two soldiers. There were two soldiers in the same box at the top of the table. I said I did by sight, but not by name. He said, I believe they belong to us. He said afterwards, I believe, Windsor, his majesty must be put to death,

and the people will be at liberty; he did not say this loud enough for the soldiers to hear; he spoke to me privately; he said he would make the attack himself on the day his majesty went to the House. If he could get no assistance from this side the water, he said he would do it with what forces he could collect from that side of the water; thereby distinguishing it from the Borough division, which was on this side of the water. The 24th of November was then understood as the day." I think it must be a mistake for the 23rd, on which his majesty was to go to the House, as it was to be the Tuesday, and the Tuesday fell on the 23rd. "There was a new appointment made by him; colonel Despard asked me to meet him on Tuesday night;" you recollect the time of his meeting him at Whitechapel at several different places, was on Monday the 15th. "He made an appointment for Tuesday night, the next night, for me to come with seven or eight intelligent men to consult on the best method of attacking the Tower and securing the arms; we were to meet at the Oakley Arms, Lambeth. I told him if he showed himself at different meetings, people would be satisfied when they saw there was such a person as him at the head of them. Colonel Despard paid for some refreshment we had, and then we parted; I parted with the colonel about a quarter before two; I saw Wratten and Wood in the course of that same day: Wood said 'he would post himself sentry over the great gun in the park, and load and fire it at his majesty's carriage as he was passing to the House.'" It might be his duty to be on that guard, but how he should say that he could secure to himself the opportunity of being in that situation on that day, seems rather extraordinary. I should suppose it is not quite in the power of a soldier to choose any particular guard he pleases at a given time, particularly such a time as that; I presume it does not depend upon himself whether he will be posted in a particular station as sentry, but that his place is assigned to him in the course of duty by some of his superior officers. Whether this, supposing it to have been said by Wood, was the effect of his own wild imagination on the subject, or whether he had really any means of obtaining that station, we are wholly ignorant.

He says, "I went to the Oakley Arms to meet the colonel according to his appointment; I arrived about half past nine, or a quarter before ten; I found they were in custody when I came there. I saw Broughton go away whilst I was there; I went into the tap-room and called for some porter; I saw Mr. Stafford, and entered into conversation with him." In this he is completely confirmed by Stafford. There certainly was nothing that prevented Windsor from going away after he found what was done with the persons assembled there if he had chosen so to do, and therefore the conversation he held with Stafford, was a voluntary one on his part.

He says, "I began the conversation with him and communicated to him that I was acquainted with the transaction that related to that night's business. Stafford mentioned an hour for me to be at Union Hall; a quarter before eleven; I kept my appointment. I never saw Emblin till the time I saw him at the Flying Horse; I am not certain whether he was in the room when I first went in, or came in afterwards." The card being shown him, he says, "a card similar to that is what I delivered to Mr. Bownas." That is the card marked No. 7, which contains the same sort of oath printed on a card, and not in the bad way of printing in which it appears upon the paper.

Being cross-examined, he says, "I have been a soldier eleven years; I am twenty-five years old; I know Blades belonged to the conspiracy from about three weeks after our return from Chatham, which was the latter end of May, or the beginning of June. John Francis swore Blades in; I took one man with me to the Oakley Arms on the 16th, of the name of James Mahon, a labourer, who said he had been United in Ireland. He was my labourer; I might invite others to go there that night." It seemed to be insinuated in the cross-examination, as if he had been endeavouring to lead other persons into the mischief who had not been in it before; but he says they told him they had been associated in Ireland. He says, "I am not acquainted with any other persons who had not attended the meeting, whom I asked to go there that night. I asked them, to make them believe that they were my own party, for my own safeguard."

Upon being re-examined, he says, "I wished to persuade one Mahon, and one Marney an Irish labourer, to go. They had told me they were United Irishmen; I was ordered to bring those people there. Mr. Bownas told me to keep an eye upon these people, and put myself as forward as possible." So that you see he pursued those measures in consequence of the advice he received from Mr. Bownas, when he first communicated to him that he had received the card; and his subsequent conduct was, as he represents, in consequence of the suggestions and recommendation of Bownas.

William Bownas is called to confirm Windsor as to this particular. He is an army agent, and lives in Derby-street. Being shown a card, he says, "I believe I received this card from Windsor. I had a conversation with him about a card. I certainly gave him advice as to his conduct, when he mentioned that such a meeting as this existed. It was about the month of July last; I have no doubt it is the same card."

William Campbell is called to confirm the testimony of Windsor as to his being at this house in Whitechapel, on the 15th of November. He says, "I was one of the guards stationed in the Tower; I knew the Coach

and Horses, in Whitechapel; Charles Dean, another soldier, who is quartered in the house, was with me. I was there about two o'clock; we sat in a box in the front of the fire in the tap-room; four persons came into the tap-room, two soldiers in regimentals, and two persons in coloured clothes; one was better dressed than the other, and had an umbrella in his hand. The better dressed man was the prisoner at the bar; Windsor and Winterbottom were the soldiers; he and Windsor were discoursing together; I did not hear what they said; they asked a little boy if they could have bread and cheese, he said they did not sell bread and cheese, but they could have some below at the shop. Some was sent for and brought; we were asked if we would have any bread and cheese; we said we had just dined, and would not have any. I did not know the fourth man. The other man in coloured clothes asked after several men said to have been in the regiment." (This applies to Lynch, who was before described as having been in the regiment and discharged.) "The man who was in the coloured clothes, said he had been in the regiment, but had been discharged. They went out together; the two soldiers went up Whitechapel towards the Tower, and the two gentlemen went down Whitechapel." This witness distinctly confirms Windsor as to the fact of his being there, having bread and cheese there, and his being there with a gentleman who had an umbrella; he did not know the person of Despard; the whole of the party are as Windsor describes, so that it is impossible for any one to receive more direct confirmation than Windsor does from Campbell.

The next witness, Charles Dean, the other soldier, says, "I was in company with Campbell on the 15th of November, at the Coach and Horses, about half past one. Campbell and I were sitting together in a box. I saw Windsor and Winterbottom come into the house while I was sitting there, they were in regimentals." He looks at the prisoner, and recollects him to have been one, and he says there was one man besides. "The prisoner had an umbrella; they called for bread and cheese. The master said he did not sell any. The prisoner gave the boy money to fetch bread and cheese; when the bread and cheese came, the prisoner asked us if we would have any; we told him we had just dined; they called for some beer; they had two pots; they asked us if we would drink; we said we would drink once a-piece with them; the prisoner paid for it, then they went out together. They went in different directions; the soldiers towards the Tower, the other men went down Whitechapel." In all these particulars he agrees distinctly with the testimony of Windsor.

Joseph Walker is next called. He differs in one particular only, that he supposes Windsor to be the man in coloured clothes; in the

other particulars he agrees with them. He says, "I keep the Coach and Horses, at Whitechapel; Dean was quartered at my house in November last; Campbell was not. I remember Dean and a person being with him, a soldier; I should not know that man, they both came off from duty at the Tower. Before they came in, there were two men of the appearance of gentlemen came in. I was in the cellar at work; when I came up from the cellar, I saw two gentlemen with a pot of porter; they asked if I sold bread and cheese. I said I did not; they might get it a few doors up the street; Windsor was with them. Windsor was one of the two that sat at the end of the table; I do not know who the other was; he was genteelly dressed in a blue coat, and had an umbrella. They were the only two men in that box. Whilst they were drinking, Dean and the other soldier came in from duty at the Tower. "*Windsor was one of the men decently dressed.*" Now that is certainly contradicted by Windsor, and by Campbell, and Dean, who all prove that Windsor was in regimentals. "The other was genteelly dressed with an umbrella; I should not know him again if I should see him." He proves, however, that the person there had an umbrella with an hook stick, but he says he should not know his person again if he saw him.

Thomas Blades, a soldier in the foot guards, says, "I know John Francis; I had a conversation with him in the presence of Windsor about the beginning of June. He told me several gentlemen had united themselves, that the gentlemen who had united themselves, were determined to risk their lives and fortunes to form a free and independent constitution; for he said the present constitution was much broken; he desired me to join them, and to take an oath to join the society. The Sunday following I conversed with John Francis on the subject; Windsor was with me at some part of the second conversation. A card was shown me by John Francis; I read it; I cannot tell the whole of it, there was, "The constitution of the united kingdoms of Great Britain and Ireland." I cannot go through what was written on the card; there was something at the bottom of it about swearing in the presence of Almighty God, to get those rights we took the oath to maintain. I was told by John Francis to kiss the oath, and I did. This was the manner of swearing. This was after the parade was over; I was sworn upon the parade. After that I went to the Ham and Windmill, in Windmill-street, at the top of the Haymarket; John Francis and Thomas Windsor went with me. I was there again the latter end of June, that evening the balloon went up from Lord's cricket ground. I was fetched by William Francis. John Francis was there; a man called Connel, as William Francis told me, and Macnamara came soon after, and there were some more there, but their names I do not know, who formed part of the same

company. Macnamara said, he came from the executive power, and exhorted the society to stick together and arm themselves, so that they might be able to make head against the government."

This man to be sure stands in the situation of an accomplice; however, you will judge whether any, and what degree of credit, is due to his testimony on its own account, and how much is derived to it from its coincidence with that of others; according to him, this was a very wide spread conspiracy. "Macnamara said he had full power from the Executive government to appoint a colonel to command the first regiment of the national guards; he appointed John Francis to that command, and authorised him to appoint three more, and an officer of artillery. John Francis appointed me as one of the three, and Connel another; and a little man another; and he appointed a person there to be captain of artillery, because he was used to gunnery; that was the person he swore in on the Sunday, when Windsor and I were present. The little man and John Francis went out of the room; when they returned, John Francis had a paper in his hand, and there was written upon the top of it, 'The first regiment of national guards, and an appointment of colonels to command the regiment.' One of the men, who was a breeches-maker, talked about commissions being issued, but Macnamara said, the issuing out of commissions would be the signing of their death warrants; that the officers should receive their commissions the night before the attack should be made. The next time I saw John Francis was the 6th of September, in the Tower; I was then on the main guard at the Tower. On the Monday following I was at the Bleeding Heart, in Charles-street, Hatton-garden, I saw him there; and John Wood, Tyndall, Wratten, Penderell, Macnamara, and Winterbottom, I believe were there. I do not recollect any others, yet several other persons were there. I suppose about a dozen or fourteen. Wratten spoke up and said to Penderell, that he had come with Tyndall from the borough, to know the determination of the Executive, as to when the attack should take place. Penderell said, the attack would have taken place before, if it had not been for two or three cowards, Roach in particular, not bringing up their men; but he said it should lose nothing on his part, he could bring a thousand men into the field at any time; he said, if he saw any man show symptoms of cowardice, he would blow his brains out. John Francis in answer to that, said, he thought it would be better to make the attack as soon as possible, at least before the den of thieves met, by which he said he meant the parliament. He said, if they discovered our proceedings, or were any ways up to them, that they would enact such laws that we should never be able to meet together, or to correspond with each other. In answer to

that, Penderell said there was no danger of discovery for that he had belonged to it a considerable time, and many persons had been taken up at different times, but had never divulged the secret. He said, that if any man should divulge the secret, he should have a dagger in his breast directly. Wood said, in case he should not be there at the grand attack, he would be with a select party of his own, and which would be of as much importance as where the grand attack should take place. Ammunition was ordered to be provided for the people by the Executive; both Macnamara and Penderell used the term Executive; but it appeared to me as though Penderell was one of the Executive. I met John Francis one Sunday as I was coming along High-street, in the Borough, he asked me to go to the Black Raven, in Tooley-street; Tyndall, Wood, Macnamara, and six or seven Irishmen were there, in a state of intoxication; there were about twelve or thirteen in all. We had a conversation about a form of government. I was at the Oakley Arms on Tuesday, the 9th of November; I was going from East Smithfield, where I work, up to Knightsbridge Barracks, to receive my pay; going along through Cannon-row, I met Broughton; he told me there was to be a meeting at the Oakley Arms that night, prior to the attack being made on the 16th." So that it seems that the 16th, being expected to be the day on which his majesty was to have gone to the house, was the day on which the attack was to be made. "Broughton said, that the heads of the people would be there to settle it, and he desired me to call upon him at the Oakley Arms: I went there; I went first into the tap-room, and called for a pint of beer; I went to the bar and asked for Broughton; the landlord called his boy directly, and told him to go up stairs and tell Tom there was one wanted him. Broughton came down to me, and took my pint of beer. I went up with Broughton; he said, the colonel is here, as I was going up stairs; I went into the room; as soon as I got into the room, a gentleman presented me with a shilling's-worth of rum and water to drink round; this gentleman was colonel Despard. Wood came and whispered into the gentleman's ear that gave me the liquor, and said, the gentlemen who are come upon business this night, ought to retire into one end of the room, and those that are only come to show their good will, to the other end of the room. Afterwards it was agreed that those who came to settle business, and who were called the representatives of the different divisions, should have the fire; and the others, who came to show their good will, should retire to the other end of the room, where there was no fire. Colonel Despard sat by the fire by the representatives, at a table, with his right side against the fire; I did not hear what passed among those next the fire. Broughton in the first place said, there is the colonel, pointing

over to him; did you ever see him before? I said no, I had not; says he, he is a very fine man. I asked Broughton whether he was fluent of tongue? he said, yes, he was. Wood said, the properest place to attack his majesty would be that place in the Mall, by his private gate between that private gate and Buckingham-house, because there would be no horse-guards there, when his majesty comes out of his private gate, after the levee day, to go to Buckingham-house. Broughton said, at the same time the Parliament House must be attacked; and when that business was done, they should hie away to the Tower directly. I did not stay till they broke up; I quitted the house about ten o'clock, and left all the persons I mentioned there."

Upon his cross-examination he says, "I have been a soldier nine years and four months. I have been punished twice. I have been tried by three or four courts-martial for absenting myself from the regiment. I never have been charged with any theft. I have been charged with beating a watchman. I was never brought to any bar."

Gentlemen, this examination was pushed to an extent, which, under certain other circumstances, and indeed under almost any other circumstances than the present, would have made it my duty to have interposed; but in a case of this peculiar sort, where a witness comes in the first place under the suspicious circumstances in which this witness presents himself, as an avowed accomplice, and considering next that he is likely to have the benefit of the ablest advice and suggestions from the law officers of the crown, as to the nature of the questions which it might be expedient for his safety that he should refuse to answer—if indeed he could be under any difficulty or danger on this head, produced as he is on the behalf of the crown—I say, in a case thus peculiarly circumstanced, I thought it unnecessary to tell the witness, that if any question was put to him which was likely to criminate him, he might ask the protection of the Court from answering it; he has however answered all the questions of every kind which have been put to him, and yet not one witness has been called to contradict him, any more indeed than there has been to contradict any other of the witnesses, though after such questions were put, one might have expected that witnesses would have been called to contradict him in some of these particulars. He says, "I was never charged with any theft in my life, nor brought before any bar. I know a person of the name of Tibbetts; I had some leather by me, and some of it was lost; he did not charge me with stealing it; he said I had made away with it; that was the winter before we went to Holland. I never on any other occasion had any charge against me; and with regard to that leather, I paid Mr. Tibbetts for it, and he never brought me before any justice for it."

Gentlemen, this is the account he gives; you must take it with all its circumstances, and say, whether in any and what degree it trenches upon his credit as a witness; the man vindicates himself from having stolen the leather and says, that he paid for it, as he might do for leather he had lost or wasted, and that he was not carried before a justice. He says, "when I absented myself from the regiment, I got off about two hundred miles; I was tried for it; I was forgiven by my commanding officer. I have served ever since. I have been on the continent twice; and have been at Chatham. I served in the expedition to Holland. I went to the continent the 5th of July, to the best of my recollection, in the year 1794, and joined his royal highness the duke of York at Antwerp."

William Francis, the next witness called, is a private in the first battalion of the foot guards, and has belonged to the regiment two years last Christmas. He says, "I was applied to by the prisoner, colonel Despard, to swear me at Tower-hill, near upon Bartholomew-fair day; some day last September, I believe; John Francis and Wood wanted to swear me to their intentions against the king and government. A card or paper was produced to me many times; I cannot read; they explained to me what the nature of it was; what I remember of it was, it was to overthrow the government, and kill the king and royal family." Gentlemen, this I conceive must be taken rather as his representation of the supposed effect, than of the literal terms of this paper; for there are no such terms in the card as "overthrowing the government or destroying the king and royal family. He says, "Help me God, was at the bottom of it, and it was a small card; they proposed that I should kiss the card, but I never did. John Francis and Wood applied to me to swear before colonel Despard; it was a brown paper like that. Colonel Despard applied to me to be sworn on Great Tower Hill, at the Queen's Head, or the King's Head, a public-house facing Great Tower Hill." Now if this be true, it makes the contents of this paper, though in the hands of others, and this business of swearing in, when done by the several other persons already mentioned, who are affected by evidence of the like kind—provided they are also sufficiently implicated by the evidence in a treasonable conspiracy with Despard, for the purpose of forwarding the same general objects and designs which have been already stated—material evidence against Despard himself; because, if this witness is believed, he is himself using one of these same papers for a similar purpose with theirs, and endeavouring to bind the conscience of this man as they had done the consciences of others, by inducing him to be sworn thereupon, "Colonel Despard," he says, "asked me what were my principles, and what I thought respecting the plan that was going on, as to taking the

Tower that day. I said I did not approve of it. I asked what was to be done that day; he was on Tower hill; he said nothing could be done that day; he said he expected money and news from France. John Francis said the people that met had dispersed, because they could do nothing that day. When he applied to me to be sworn, the colonel read the brown paper over to me; it was the oath; after he had read it over, he gave it into my hands to kiss. I saw the colonel afterwards, soon after Bartholomew-fair, at the Bleeding Heart, Hatton Garden. Colonel Despard, John Francis, Wood, and Macnamara, and others were there. The plan was read over about taking the Bank, the Tower, and the Horse Guards, colonel Despard read over the same paper to me in the corner at the top of the table, close by my brother's side, and desired me to kiss it. The colonel said he hoped my principles were mended since the last time he saw me. I did not comply with his desire. He said, it was odd my principles were not the same as my brother's. I knew the Coach and Horses, near Moorfields. I was there the Sunday after I came from Windsor, my brother and Wratten were there; and Macnamara, and Wood, and Newman were there; the subject discussed at this meeting was concerning a paper Wratten brought from Windsor respecting plans of government. Some soldiers there drew their bayonets, and we insisted upon having a time fixed for taking the Tower before we left the company." I do not find any thing here of the kind which was mentioned and observed upon by the counsel for the prisoner, that the persons present at this meeting had been sworn on their bayonets. I find no swearing upon bayonets: but only that they drew their bayonets and insisted upon having a time fixed for taking the Tower before they left the company. William Francis, though he does not appear to have taken the oath, appears to have joined with the rest in what was done. He says, "I went to the Running Horse; we went to settle the business. Mack said he believed we should meet with the colonel there; we went up stairs and drew our bayonets, because we would have a time fixed. Mack said he would convey our desire to the grand committee. The next time I saw colonel Despard, he, and my brother, and I, had a shilling's-worth of brandy and water. We met him that time accidentally; he offered a small card which my brother gave to him, he looked it over and handed it down to me, meaning for me to kiss it; but I would not, and told him I never would; he said he was sorry I was not of the same principles as he was." It is very extraordinary, that though this man seems to have joined in this treasonable scheme for seizing the Tower, and the like, that he would not kiss the card. "I told him," he says, "I had been sworn once to my king and country, and would not be sworn any more."

Upon his cross-examination, he says, "I have been a soldier two years last Christmas; I never got a flogging in my life. I never was tried by any court martial. I cannot say I was never charged with deserting; I did desert. I was scarcely twenty-four hours out of one battalion before I was with the other. One Cassels was with me; a corporal and two men were sent after us; some watches which Cassels had was partly the reason, but it was more on account of desertion than the watches that we were apprehended. The watches were taken from different men in the town. I never saw Cassels pawn any more than two. I knew after he left Chatham, that he had taken them, but not before. My brother never charged me with robbing him; nobody ever did." So that, according to his own account, he was not concerned in the theft, though he understood after the man left Chatham, that he had not come honestly by the watches.

Upon re-examination, he says, "Cassels was a watch maker by trade. When he went from Chatham, I did not know he had any more watches than his own. I came to London; I voluntarily gave myself up to my regiment. I did not receive any punishment, serjeant Darby got me a pass from the general in London to go to Chatham to join my regiment. I rejoined the regiment, and have continued with it ever since."

John Connel was next called, he says, "My name is Patrick, I never used that name till I was apprehended;" then he says, "I gave in the name of John, by the desire of colonel Despard, when I was apprehended at the Oakley Arms by the officers of justice, in the presence of the prisoner." I think that circumstance should not apply materially as against Despard; namely, his desiring him to use the name of John, because he could not then probably advise him so to use it in contemplation of deriving any such advantage from it, in the occasioning a misnomer in the list of witnesses delivered in on the part of the crown, as has eventually arisen, and been derived from it on the present occasion. What the purpose was for which he might desire him to use the name of John, is to us inexplicable; but the subject is now wholly immaterial, as the crown has waived its claim to examine him as a witness.

John Bird is next called, he says, "I know John Francis. I remember his coming to my lodgings in the month of August, at New Windsor. He did not produce any thing to me the first day. I had told him my master worked for the royal family; he said, he would be bound my master was a pretty villain. He came to my lodgings again; I believe, the next day; he told me then that the king would be dethroned; it was the beginning of August; he was at that time stationed with his regiment at Windsor; the guards were at that time upon duty there. He told me in what manner the new parliament would

be-raised after the king was dethroned; every parish was to form themselves into a committee of fourteen, and then into seven, and one out of every seven was to come into the parliament house. He asked what sort of a place Windsor Castle was, what plate there was, whether it was silver or gold? I said, I could not tell him. He used to come almost every day. When he came again, he said he had something he would show me; he showed me a card, and offered to swear me. I read it; I offered it to him again; he would not take it; he damned my soul, and bid me kiss the book. I put it to my head as if to kiss it, and gave it to him again; this is like the card. He asked me to let him leave a book with me, that he did not like to leave at the barracks, which I refused; he did not show me the book, or explain what it contained. He offered me three shillings, or three shillings and sixpence a-day to go along with him to London, and a twenty pound note when I should be wanted: he said, that it was to fight to burst the chain of bondage and slavery."

John Pike says, "I know Wood of the first regiment of guards; he showed me a card; I was in the same company: he said, will you agree to this, and abide by it?" it was in size like a card shown to him. "I read it over, and returned it back when I had read it, and told him I would not. He told me there were upwards of three hundred or four hundred of soldiers of the third battalion lying in the Tower, and about thirty of the first had already engaged in the Constitution Society; that is, the society, to forward which this card was printed. I know John Francis; I saw him and Wood together; they were going to the Ham and Windmill, in Windmill-street; they invited me to go with them to have something to drink, and said that it should cost me nothing. I went along with David Morgan, of the same company that I belong to. I was directed to ask for John Wood and John Francis; it was on a Sunday night, the second Sunday after the battalion came from duty at Windsor. At first going in I sat in the tap-room; there were more soldiers there; there was a man who seemed an Irishman, who asked me if I would go up stairs with my comrade Morgan, and some soldiers in the tap-room; Morgan and I went up, we found Francis and Wood there, about eighteen soldiers, and three men dressed in coloured clothes. One sentiment given as a toast to be drank was, 'May the wings of Liberty never lose a Feather.' Wood said, when I returned him the card, that if either I, or any other man, were to divulge the secret, we should be immediately put to death. I do not know all the soldiers by name there were at this meeting; there were John Francis, William Francis, Thomas Newman, David Morgan, James Saunders, Job Roberts, John Rogers, and there was one there of the name of Brown. John Francis told me, if I engaged with them, I should have three shillings and sixpence a-

day. I afterwards saw Francis and Wood at a meeting at the Bleeding Heart, in Charles-street, Hatton Garden, where soldiers were present, and the business was the same as that discussed at the Ham and Windmill."

On his cross-examination he says, "I have been a soldier three years and eleven months; I was punished with two hundred lashes, for absenting myself from my post when on the king's guard, when sentry in the Prince's gardens; nobody ever attributed any thing to me about stealing eggs. I am a private. I was a corporal and have been twice reduced. I have been a private now eighteen months."

Robert Tomlinson, a soldier in the first regiment of guards says, "The second Sunday after the battalion came from Windsor, I was at the Ham and Windmill, Windmill-street; William Francis was there; Saunders was there, and Job Roberts, with whom I went; I knew very few of them. Macnamara asked me to be sworn in this conspiracy, and desired me to swear. I asked him what it was; he said a free and easy society, to overthrow the government, and have our nation the same as France. He asked me to come again the Wednesday following, but I never went again."

Job Roberts, a soldier in the first regiment of foot guards says, "I was at the Ham and Windmill on a Sunday, with Tomlinson; there were thirty or forty soldiers; a gentleman in coloured clothes, who looked like a tradesman, desired me to sign my name to a paper; I do not know who it was: seeing the persons, when removed from Newgate hither, I thought it was the last person that came out, but I cannot swear to it."

Peter Pollard says, "I went to the Oakley Arms; Daniel Tyndall asked me to go there; I went with him. I was there but once. I was there on the 16th of November, when they were apprehended."

Gentlemen, the next witness, John Emblin, is a very material one; he says, "I am a watch maker by business, residing at Vauxhall. I was at the Oakley Arms on the 16th of November. The first person that told me of the meetings there was Lander; he told me of them about four weeks before I was apprehended. He asked me if I heard any news; I said no; he said that something very particular was on the carpet. He asked me whether I had heard of any society forming; I said no, I thought they were all done with; he said no, that a party was forming stronger than had ever been yet, and that they looked up to colonel Despard as their head. I saw Broughton and Lander frequently. The first meeting I had with Broughton was after this intimation from Lander; to the best of my recollection it was on a Sunday; I and Lander were talking together, Broughton came up; I objected to the plan of overturning the government, which Broughton called the system of man-eaters, calling the government a set of man-eaters. Broughton frequently invited

me to attend the meetings of the society; I told him at first I could not attend the meetings of the society, my family called for all my attention; I told him so on repeated applications. He produced to me some papers; they were on about a sixth part of a sheet of paper; he said they gave them out for them to know their friends by, and that when the attack was made, all that were not of their principles would be put to death; this is the language of the paper I had. I remember on Friday, the 19th of November, being at the Queen's Arms, Vauxhall, with John Hayes and Graham; whilst he and I were together, Broughton came in; he tapped Graham on the shoulder, and asked him how he did; he then saw me, and came and drank with me; asked me to go to the Flying Horse; there would be such a nice man there, he was sure I should like his company. I asked him who the nice man he talked of was; he said colonel Despard. He said the king was to be stopped when he went to the Parliament House, and the business was to be settled." Some of the other witnesses, I think, say it was to be upon the king's return from the Parliament House. The witness continues, "I believe Broughton said the Tower was to be taken that day, but I cannot charge my memory. Broughton said he must go, because the colonel was punctual to his time, as he had already exceeded his time, and he went out and took Graham out with him. I made an excuse to go out, and overheard Broughton persuading Graham to go; they seemed to turn towards the house again; I met them returning towards the house; I said, Mr. Graham, if you will go I will; Graham agreed to go, and said he would be there in an hour. Graham said, I did not know you were of those sentiments; I said, no more I am, but I have a mind to go and see the humour of it." This witness certainly indulged his curiosity at a mischievous expense, because his presence unquestionably tended to forward the purpose of the conspiracy, to give countenance to those who were present, to induce a persuasion that he joined them in those purposes, therefore his presence could not have any other than a mischievous effect. "I went with Graham to the Flying Horse; I found colonel Despard there, and Broughton, Windsor, and Smith; they were all sitting in a back parlour below stairs." You recollect how that falls in with the evidence of Windsor, and is confirmed by the evidence of the landlady. "Windsor was there before we came. When we went in they were engaged in conversation. When we went in Broughton desired us to come and sit down; Graham took a chair and sat by colonel Despard; I took another and sat by Graham. This was the first time I ever saw colonel Despard. Windsor was speaking about the form at the Tower of the keys being passed to the centinel, and he said, that the ceremony of saying God bless the king and Amen was an ancient ceremony, which had

been laid aside for some weeks, except in one instance, and the man had then been scouted for using it. I asked Broughton who colonel Despard was; he told me who he was. I thought the colonel heard me, and I apologized to him, saying, that I did not know him before, but that I had read of him in the Cambridge paper. The conversation turned on the wet docks, and on the circumstance of soldiers being employed to guard them. I asked colonel Despard whether there was any particular business in hand, and what he thought of it; he said, nothing in particular, only it seems to be the wish of a great many people, that an effort should be made to recover some of those liberties which we have lost, and the day is fixed for Tuesday week next. I asked him if he had any ground or sufficient force to go upon; he said, yes; a considerable force indeed, if the people come forward in the way I have been given to understand they will; we have a great number of the army, and there are a great number in all parts of the kingdom, in Birmingham, Manchester, Leeds, Sheffield, Yorkshire;—I do not say that I enumerate the places exactly as they were enumerated to me, but he mentioned all these places; and here in and about London the people are every where ripe, I think he said; Chatham was mentioned as another place. He said he had been engaged in this business two years, or more than two years. I have travelled, he said, twenty miles to-day." Windsor stated that he said he had walked twenty miles, 'and the people, wherever I have been, are every where ripe, and anxious for the moment of the attack.' I asked him if he had any regular organization; he said regular organization would be a moral impossibility; he did not exactly state the reason why, but that it would be so near and so much under the eye of government, but in the country it would be more general. I asked him whether the attack was to be made in London and the country on one and the same day; the form of my question I am not quite sure of; he said no, by no means, that would be highly improper, but that the stopping the mail and stage coaches would be a signal to the country. During the evening, Graham, the prisoner, clenched his right hand, and swore, with an oath, you will do no good, unless you secure the whole of the family. Broughton shook his head, and said, that is easy enough done; that is already settled. I asked him how; he said, take and shoot two of the horses, and then the carriage must stop;—the king's carriage, I understood him;—and then seize him immediately. This was to be done as the king should return from the Parliament House. I replied, do you consider there are horsemen that ride close to the carriage, with their horses heads almost in the window, and any person attempting such a thing would be cut to pieces: then says I, who would do it? says the colonel, I would do it with my own hand. I cannot recollect any more expres-

sions of colonel Despard's at that meeting; but I recollect the colonel saying, I have weighed the matter well, and my heart is callous. I rather think this was after saying he would do it with his own hand. There was a conversation respecting seizing the Bank, but the exact words I cannot tell. It was agreed the Bank should be seized and the Tower should be taken; the Bank I particularly recollect; they said the arms there, about six hundred in number, had been rendered useless, by some part being taken off, but I cannot say what part: whatever was said was all distinctly heard by the colonel. I principally engrossed the conversation; my curiosity is the main occasion of my standing here to-day. I remember the seizing the Tower was treated as a matter of confident expectation and certain success. I recollect one person, Windsor, said, give me a hundred men, and I will take it myself. The colonel went away and left us there; we continued there some time afterwards and then went away. I gave the maid something; they would not let me pay at the bar. I gave the girl threepence; the girl seemed awkward at taking it; I said, I will take a kiss the next time." You remember, he thought it necessary to make some kind of explanation or apology about the matter; I do not well understand how it required any such particular explanation. He proceeds—"I did not see colonel Despard again till I saw him at the Oakley Arms. I went to the Oakley Arms on the evening we were apprehended at about eight o'clock. I did not expect to meet any body there scarce. Lander, in the day time, had been talking of the attack on the Tower, and wished to know whether it would be prudent to have a division to march from the Tower to New-street, Bishopsgate, and there take the arms of the India Company; from thence to the Artillery-ground, where they could get more arms and artillery; and from thence proceed forward and assist the attack at St. James's, and if they had a sufficient force at the taking of the Tower, he also proposed another detachment should go another way, through the Borough and through the New Cut to the Parliament House, to assist those who would be there; and he said, that he thought it might be proper to have couriers to ride backwards and forwards, and give accounts of the success of the army; and if I understood him right, he had been on the Sunday previous to that to engage a house, where, I understood him, he was to sit and receive the reports of those couriers or aide-camps, or whatever they might be termed, which house, to the best of my recollection, was the sign of the Angel, in Cecil-court, St. Martin's-lane, and then he asked me to write down the plan, which I refused; he seemed to look at me with astonishment. I had never been sworn into the society, and was therefore looked upon with a jealous eye. I then said, if you please, I will go with you to the

colonel, if you can introduce me to him, and see what he will say to it. I had had a conversation on Monday with Graham. I understood Lander that he would introduce me to the colonel that evening; that evening as I was carrying home a clock, I met Broughton near the turnpike; he said, I understand you are coming down this night; do, he said, but don't be long first. I said, I cannot come till I have put my clock up. He and I parted; going on I saw Lander shutting up his shop. I went past his house, where I was going with the clock. He asked me if I was ready; I told him no, I was obliged to go home with that clock. He said, how long should I be; I said, about a quarter of an hour; he said, if I would not be longer he would wait for me, but he was in a hurry, as he had to go to town; when I returned he was gone, and I went to the Oakley Arms by myself. Broughton and Lander had both told me the meeting was to be there. I believe I had been in there about twenty minutes when the officers came in, I went into the parlour on the left hand at the Oakley Arms; I saw some persons who appeared to be strangers; they asked, who do you want? I said, Broughton, or Russel; they said, you will find them up stairs; I went up, Broughton desired me to sit by him. I judged there must have been about twenty persons there then; there were two came in after me, Smith and his journeyman. Colonel Despard was there. On Broughton seeing me, he asked me to sit by him. The company were engaged in conversation in different parties. Colonel Despard was standing and speaking to John Francis. Broughton said, my boy, my cock, we have got the completest plan in the world, to do the business without any trouble; we will load the great gun in the Park with four balls or chain shot, and fire it at his majesty as he returns from the House; then, with a sort of a sneer, he said, he would be damned if that did not send him to hell, and so on; the expressions shocked me very much, and I exclaimed, good God! do you consider how many people will be in the Park that day, and how many lives you will take away! He then said, damn them, let them get out of the way: he said it would play hell with the Treasury, and round about there. Some person in company said, that the cannon might be too low: another person said, it might be easily raised an inch: some person said, but if it misses his majesty; Broughton replied, then damn him, we must man-handle him. I cannot exactly say, whether I had conversed with the colonel before this, I rather think I had, the colonel was as near as you and I are now; the conversation I had with the colonel was, I asked Broughton whether I might speak to the colonel; I said, Sir, you were speaking of taking the Tower, alluding to the conversation at the Flying Horse, and that Lander had said, would it not be proper to have a division to go from there. I repeated the plan which

Lander wished me to write down; the colonel said, he did not approve of it, for he believed that one half of the East-India Company's men in their warehouses were our friends already; but the colonel said, we are not sure that we can have the Tower, but if we have the Tower, we have every thing; there are arms sufficient to arm a great number of men; he named the number, I do not recollect it, but more than were wanted for the purpose, and to go to the Artillery-ground would be useless, for what purpose would it answer? I replied it was to form a sort of garrison to annoy the associations; the colonel said, no; St. Paul's would be a great deal better place. I cannot tell you exactly the terms; but it was in that conversation the colonel said, if we have the Tower and the Bank we have every thing. I said, Sir, do you think it would be proper to meddle with the Bank? he said, surely, the Bank ought to be almost the first consideration, for if we have the Bank and the Tower, we have every thing necessary, and that from the Tower he could burn the town and batter it to pieces. Somebody talked about destroying the Telegraph. I said, Sir, do you think that would be necessary? he replied, surely, for it is a thing that would be of no service to us, but of vast importance to our enemies." He said that Windsor is a total stranger to him, that he saw him for the first time on the 12th of November at the Flying Horse.

Upon his cross-examination he said, he came from Witney, in Oxfordshire; that he was then in custody, and had been so ever since he was seized at the Oakley Arms.

The next witness, Mrs. Mary Plowman, certainly affords very material confirmation to both Windsor and Emblin, as to what passed at her house on the evening of the 12th of November. Mary Plowman, the landlady at the Flying Horse, at Newington, says, "I remember hearing of the people being apprehended at the Oakley Arms; some gentlemen came to my house a few days before; there were, I think, about six of them: the first persons that came, came in a little before eight o'clock, at the street-door, and went through the passage into the parlour. I was working in the back room; when they came in they called for a pot of porter; they said, they hoped they did not disturb me; there were two of them then: one was dressed in a dark brown great coat, and had a silk umbrella in his hand;" which description tallies with the description before given of colonel Despard at other places: "they went into the back room, which is called the kitchen; which we call a parlour; the door was shut, and the curtain drawn; they drew it themselves; they appeared much in private. I heard one man say, *he had weighed every thing well within him, and his heart was callous.* The person who said this was speaking slow, but not very loud." I asked her at what distance she was when she heard this; she said,

about the distance that I was from her; that she was then leaning over the bar. "I know Windsor, he was at my house that evening. I remember there were two men there before Windsor's arrival. He asked if any body had inquired for him; seeing somebody backward he joined them. My husband was out with his beer that evening. I cannot say how the reckoning was paid, as to what was had in the parlour; the servant maid went in and took the money: they went away a little after eleven o'clock. When five men went away, they came to the bar, they had four glasses of gin and a glass of rum, which came to nine-pence. I gave three-pence change to a little man, who turned and gave the three-pence to the bar maid." This circumstance of giving the half-pence to the bar-maid, as related by this witness, is a farther confirmation of both Windsor and Emblin, as to the same fact. She also confirms them as to the fact of the person with an umbrella having left the company before this time.

Sir Richard Ford says, that he took down the examination of Windsor at the Secretary of state's office, in consequence of which Blades and Francis, and some other soldiers were sent for and examined.

This is all the evidence that has been given on the part of the prosecution. Gentlemen, you were very properly told that this case does not involve, as indeed it does not, any question of law. I have already observed to you upon the point that was made by the counsel for the prisoner, namely, that this was a case of treason, where the overt-acts proved consisted merely in words, and that mere words could not amount to an overt-act of treason. If this evidence is true, besides the other overt-acts of meetings and consultations, — seduction of soldiers, — administering of these unlawful oaths for the purposes of this conspiracy, — the words were used as the means, instruments, and vehicles, for carrying the avowed treasonable objects of the parties into effect, by proposing, arranging, and settling a plan for seizing the Tower and the Bank in the first instance, and for assassinating his majesty, and overturning the constitution, in the second.

To the observations made by the defendant's counsel respecting the testimony of accomplices, I have already adverted. It is singular enough that the defendant's counsel expressly admit that a traitorous scheme and conspiracy did exist somewhere; but they contend, and wish you to believe, that the prisoner at the bar never concurred in, or was a party to such conspiracy. If there be treason, whose treason is it if it be not his? If he be not the traitor, who are the persons that are so? If the witnesses are worthy of credit to the extent of proving the existence of the treason itself, why are they not also worthy to be believed as to the persons of the traitors? The safer and more consistent course would certainly have been to deny to their

testimony all credit whatsoever, either as it established the crime, or as it affected the supposed criminal. If, indeed, they were unworthy of credit by the general course and habits of their lives, and have so demeaned themselves that they were not entitled to be believed upon their oaths, it was competent and highly proper for the prisoner to have called persons to prove that the witnesses produced against him were persons wholly unworthy of credit, and not fit to be believed upon their oaths;—persons tried for high treason being, by the indulgent provisions of the law, in possession of the names of all the witnesses to be brought against them, for more than ten days before their arraignment, have ampler and more convenient means of confronting or discrediting witnesses, than any other description of persons who are the objects of accusation and trial;—with all these advantages of the law in his favour, no evidence of that kind however has been offered, or attempted to be offered on the part of the prisoner, against any one of all these several witnesses; they stand therefore before you not impeached, or even attempted to be impeached, in the usual and ordinary way in which witnesses grossly unworthy of credit may be, and are, properly attacked and discredited.

As to the objection that the bulk of the evidence given in this case proceeds from accomplices, it is certainly true, that the evidence in this case rests principally (as in some cases it does and must almost entirely) upon the evidence of accomplices. What was said by lord Holt in the trial of Charnock, Keyes, and King, in the state trials alluded to by the solicitor-general, comprises in a few words the good sense and the law upon the subject. "It is certainly," says lord Holt, "a very hard matter, if not impossible, to discover crimes of this nature, if the accomplices in those crimes shall not be allowed to be good witnesses against their fellow conspirators." And in answer to an objection of the prisoner, "that though an accomplice was a legal witness, he was not a good one;" lord Holt adds, "he is a very good witness if he be a legal witness, but the credit of what he says, in all other cases, must be left to the jury, who are judges of the matter of fact and of the credibility of witnesses." In that case the three most, and I may say almost the only material witnesses, were all of them principal conspirators in the treason; though one of them, a Mr. Pendergrass, drew back early, from a detestation of the intended measure of assassinating the king; and there was no such confirmatory evidence of persons not concerned in the criminal project as has been produced upon the present occasion. You have had proof from several persons of their meeting at public houses; in one instance, Walker, the landlord of the Coach and Horses, in High-street, Whitechapel, who was present, confirms not only the cir-

cumstance of their being at his house, but various other particulars related by Windsor, as having passed on that occasion; and which are also farther confirmed by the two soldiers, Campbell and Dean, who were also present, and invited by the prisoner to partake of the bread and cheese he had sent out for. Windsor and Emblin are most materially confirmed by Mrs. Plowman, the landlady of another public-house, who overheard those very extraordinary and marked expressions of the prisoner respecting his heart being callous, which you cannot have forgotten. So that in this case, such of the witnesses as are properly accomplices, have been confirmed in a manner in which they have hardly ever yet been confirmed in other cases.

Some of those who have been called accomplices, are not strictly speaking such. If Windsor entered into this scheme with the original purpose of making a timely discovery of the mischief,—and that he did so, his immediate communication to Mr. Bowma, the advice he received from him for his conduct in the business, his subsequent voluntary communication to Mr. Stafford, his voluntary appearance at Union Hall the next day, his uncompelled discoveries appear very strongly to indicate,—upon that supposition I say he is not strictly an accomplice; though the concern he had in the business in continuing so long, and mixing so intimately, and forwarding with so much apparent good will and alacrity, the objects of the conspiracy, certainly exhibit him to you as a person of a very delicate character and feelings: and if the testimony he gives had been materially confirmed, as it has been, and if his general credibility as a witness upon oath had also been impeached with effect, I should certainly have advised you to pause upon the testimony of this witness, and to think well of the degree of credit you ought to give it before you believed it. Emblin as well as Windsor receives, you will recollect, confirmation from Mrs. Plowman, as to the meeting at her house on the 13th of November, and the memorable language used by colonel Despard there; and Emblin too is neither contradicted nor discredited in this, or any other part of his story. If, then, a treasonable conspiracy for the imputed purposes existed at all, and it is admitted that it did, who is the traitor if the prisoner be not the person? He is found in a society which, from his former situation in life, his former character and habits, seems to have been most unfit for him, and ought certainly to have been most distasteful to him. An officer, heretofore of considerable rank and command in his majesty's service, is found in daily conversation with soldiers of the lowest class, at public-houses of the meanest resort, in company with the commonest workmen and labourers, yet no account is attempted to be given of the reasons which brought him to these places, or mixed him in this extraordinary sort of society.

What, it may be asked, led him to the Flying Horse at Newington? What to the Oakley Arms? What to Tower Hill? What to the Coach and Horses at Whitechapel? What induced him to sit down there with such men as Windsor, Winterbottom, the two soldiers, and Heron? What, to partake with some, and to offer to others, the humble fare he sent for upon that occasion? What honourable end or purpose could he aim at promoting by such degrading intercourse or connexions? If there were any end or purpose which he could safely avow, it was incumbent upon him to have shown it in evidence to you. But has he explained in evidence, or even attempted to explain in argument, the motives of so extraordinary a conduct? Have his counsel offered one plausible excuse for his presence on these occasions? On the contrary, you are left without the shadow of a reason, apology, or excuse, suggested on his behalf, to resist the inferences naturally resulting from such a conduct as his. He affords you no assistance on this head, nor in any degree enables you to draw a more lenient and favourable conclusion from these facts, than what they, on the outside of them, seem to suggest to you.

It would have been matter of great satisfaction to me to have been furnished with some materials of explanation to lay before you on the part of the defendant, to account for all these apparent untoward circumstances, but I am furnished with none. The case, as far as I am able to discover, contains none. The only evidence offered on his behalf, is as to his character, and that is, as applied to the particular point of time which it respects, as high and unexceptionable as can be given of any human being. Lord Nelson, —upon whom, as witness upon such a subject, it would be a needless waste of words to bestow any commendation, or to state what must be the value of his testimony in the estimation of every British jury,—lord Nelson states, that he knew colonel Despard; it is twenty-three years ago since he saw him. “I became acquainted with him,” he says, “in the year 1779, in Jamaica, when he was a lieutenant in what was called the Liverpool Blues, when the invasion of Jamaica was expected to take place.” His lordship spoke of the hardships they had borne together in the course of service; that they had spent many nights together upon occasions when, as I understood him, they had been in the trenches together; he tells you that no man ever showed a more zealous disposition for the service of his king and country; —“I formed, he says, “the highest opinion of him at that time, as a man and as an officer, seeing him so willing in the service of his sovereign; having lost sight of him for so many years, if I had been asked my opinion of him I should certainly have said, If he is alive he is one of the brightest ornaments of the British army; but I have seen nothing of him since

the year 1780. I know nothing of his loyalty for the last twenty years.” It would have been most important and happy for this gentleman if he were now able to exhibit to you his character in the same high and brilliant estimation in which it then stood, and had been able to bring down a reputation equally well earned and splendid to the moment of his present peril, by producing persons of similar character and estimation with lord Nelson to speak of him, as having deservedly maintained the same character to the very time of his appearing at this bar.

Sir Alured Clarke is next called, he says, “I have known colonel Despard, I think I may say with safety, thirty years; I knew him at home with his relations at first, I knew he was very well respected by the officers of the corps, and I considered him as likely to be a very useful officer; I knew him at a later period, while I was in the government of Jamaica; he was under my orders during the six years I was in that government; I had a correspondence with him while he was in the superintendence at the Bay of Honduras, he was a loyal and good officer. It is thirteen years since I have seen him or had any intercourse with him.”

Upon cross-examination he says what could not fail to strike you; —“I never knew him associate with common soldiers, I should have had a different opinion of him if I had thought it possible.”

Sir Evan Nepean says, “I have known colonel Despard since the American war; I have not had communication with him since the first suspicions fell on him; I did not at all suspect him, he bore a respectable character then; I knew him officially, his general conduct was such as to entitle him to that character. When he first presented himself to me, he brought testimonials to which I gave credit, till some subsequent suspicions lit upon him; but the grounds of those suspicions I am unacquainted with, and I have no other ground for thinking otherwise since, than the circumstance of his commitment to prison.”

Now, gentlemen, this is the whole of the evidence, on the one side and the other; the first thing necessary to be seen and attended to is, that there has been an overt-act of some one of the treasons charged in the indictment, proved by some one witness to have been committed within the local limits of this county; the Oakley Arms and the Flying Horse are both situated in this county; there is no question as to their locality. The next thing necessary to be looked to is, that there be two witnesses to the same overt-act, or one witness to one, and another witness to another overt-act of the same species of treason. Now the meetings and consultations at these several places, and the transactions which passed there, if the witnesses to them are believed, are all spoken to by more than two witnesses, so that the competence and suffi-

ciency of the proof to bring the case in point of locality of crime, and the number of witnesses necessary to prove it, within the requisition of the statute, are perfectly established.

The only remaining question for your consideration is, whether you believe the evidence of Emblin, of Francis, of Blades, and of Windsor, all or which of them, as to any one of these meetings, conversations, or actings, imputed by them to the prisoner at the bar. If you believe Windsor and Emblin, the guilt most undoubtedly is made out beyond a possibility of question; if you have any hesitation about believing them, look at the confirmation which attends them. First, where is this person actually taken? He is taken at the very place, and in company with the very persons, at which and with whom, according to the account of these witnesses, he is in the habit of meeting, conversing, and consulting for these purposes; the men found with him are taken with this very furniture and apparatus of mischief about them, of which we have heard so much, I mean the printed copies of these abominable oaths; he is apprehended almost in the act and attitude of command, and the rest who were present in the act of obeying him. You recollect that when the officers come in he advises the company to go out of the room one and all; that he marches towards the door, and they all rise and follow him. In addition to these circumstances, you find those various circumstances of confirmation scattered through the whole of the evidence upon which I have observed already. In the instance of Windsor you find that he on the 18th of November is introduced by Broughton to colonel Despard, at the Flying Horse, Newington; this meeting of these parties, and several of the circumstances attending it, are also proved by the landlady. The prisoner desires Windsor to meet him at the Tower, on Monday the 15th of November; he meets him there; he goes to the Two Bells at Whitechapel; this stands only on the evidence of Windsor himself; but as to the meeting on that day, and about the same time at the Coach and Horses, Whitechapel, he is completely confirmed by Walker, the landlord, and by William Campbell and Charles Dean, the soldiers, who are all totally unconnected with the conspiracy, and are perfectly indifferent witnesses; and they confirm Windsor substantially, and with no very material difference, as to all such facts and circumstances as happened there under their immediate notice and observation; so that if he is believed, there is an end of the question; for then he, with any one of these other indifferent witnesses, constitute two witnesses to an overt-act of treason; if Emblin and Windsor are believed, there is, *a fortiori*, an end of the question, and the law, which requires two witnesses, either one to one overt-act and another to another overt-act of the same species of treason, or two witnesses to

the same overt-act, will have been most abundantly satisfied.

It will be for you to say what credit you give to the testimony of these witnesses, taking at the same time into your consideration the character that has been given of the prisoner, which if it had been given by the witnesses with full means of knowledge of all that belonged to it, down to a much later period of time, so as to be considered as exhibiting the continued and now actual habits of life and conduct of this gentleman, he would have stood before you most strongly supported indeed against any imputation of disloyalty that could have been cast upon him. Whether any malignant change of disposition has been fatally wrought in him since the termination of his acquaintance with the noble lord and sir Alured Clarke, from any cause, or has not, and from what circumstances such change, if it has taken place, may have arisen, we know not; we can only look to the plain evidence of external acts, to the uncontradicted history of his recent conduct which is now before us. If you believe all the witnesses to be generally unworthy of credit, or if in the particular facts sworn to by them you cannot bring yourselves to believe Windsor and Emblin, Francis and Blades, notwithstanding the confirmation they have all received from so many various sources, then this person ought to be exempted from the consequences of the charge made upon him; but if you do believe them, I am afraid in that case, that as there is no doubt upon any question of law, so neither will there be much room for doubt upon any of the questions of fact, which are now fully left to you for your consideration.

The jury withdrew at about twenty minutes after two o'clock on the Tuesday morning, to consider of their verdict; they returned into court in about twenty-five minutes, with a verdict finding the prisoner—GUILTY.

The foreman added—"My lord, we do most earnestly recommend the prisoner to mercy, on account of the high testimonials to his former good character and eminent services."

At three o'clock the Court adjourned to nine o'clock on Wednesday morning.

On Wednesday the 9th, the Court met pursuant to adjournment, when the trial * of John Wood, Thomas Broughton, John Francis, Thomas Phillips, Thomas Newman, Daniel Tyndall, John Doyle, James Sedgwick Wratton, William Lander, Arthur Graham, Sa-

* As the trial of the other persons indicted for colonel Despard's conspiracy does not contain any additional matter of interest or importance, and as from its great length it would occupy a very considerable space in the present volume, it has not been thought advisable to insert it.

ruel Smith, and John Macnamara, commenced, which lasted till near eight o'clock the next morning, when the jury found John Wood, Thomas Broughton, John Francis, Thomas Newman, Daniel Tyndall, James Sedgwick Wratten, William Lander, Arthur Graham, and John Macnamara, guilty.

After which, Edward Marcus Despard, John Wood, Thomas Broughton, John Francis, Thomas Newman, Daniel Tyndall, James Sedgwick Wratten, William Lander, Arthur Graham, and John Macnamara, were set to the bar.

Lord *Ellenborough*.—Edward Marcus Despard, John Wood, Thomas Broughton, John Francis, Thomas Newman, Daniel Tyndall, James Sedgwick Wratten, William Lander, Arthur Graham, and John Macnamara; after a long, and I trust a patient and impartial trial, you have been severally convicted of the high treasons, which are by your indictment charged upon you.

In the course of the evidence which has been laid before the Court, a treasonable conspiracy has been disclosed of enormous extent, and most alarming magnitude.

The object of that conspiracy, in which you have borne your several very active and criminal parts, has been to overthrow and demolish the fundamental laws and established government of your country; to seize upon, and destroy the sacred person of our revered and justly-beloved sovereign; to murder and destroy the various members of his royal house; to extinguish and annihilate the other branches of the legislature of this realm, and which some of you have chosen, in bold and desperate language, to describe as a *den of thieves*; and thereby to supersede, of course, all the functions of that legitimate government amongst us, which others of you have chosen, at some of your meetings and consultations, to consider and to denominate, in terms equally reviling and unjust, as a *system of man-eaters*; and instead of the ancient limited monarchy of this realm, its established, free, and wholesome laws, its approved usages, its useful gradations of rank, its natural and inevitable, as well as desirable inequalities of property, to substitute a wild scheme of impracticable equality, holding out, for the purpose of carrying this scheme into effect, a vain and delusive promise of provision for the families of the heroes (falsely so called) who should fall in the contest:—a scheme equally destructive of the interests and happiness of those who should mischievously struggle for its adoption, as of those who should be the victims of its attempted execution.

This plan has been sought to be carried into effect, in the first place, by the detestable seduction of unwary soldiers from their sworn duty and allegiance to his majesty, and by the wicked ensnaring of their consciences by the supposed obligation of an impious and unauthorized oath; and next by the industrious association to this purpose, of the most needy,

or the most unprincipled persons, in the lowest ranks and classes of the community.

To induce a more ready accession to the purposes and designs of this confederacy, it was (I hope falsely) declared, that the country at large was ripe for insurrection, that the great, populous, and manufacturing towns and districts of Great-Britain, were universally prepared, and anxious for the change, and the name of an *executive authority* vested in, and exercised by some unknown persons, and upon which the immediate adoption of great and decisive measures, the distribution and direction of the general force, the supply of ammunition and military stores was to depend, was held out as the means of encouragement and assistance, and the pledge of protection and support.

It is, however, wisely ordained by Divine Providence, for the security and happiness of mankind, that the rashness of such councils, does for the most part counteract and defeat the effects of their malignity, and that the wickedness of the contrivers falls ultimately upon their own heads, affording at the same time due means of security and escape to the intended victims of their abominable contrivances.

The leagues and unions of such associates are at all times false and hollow. They begin in treachery to their king and country, and they end, if they do not immediately begin, in schemes of treachery towards each other.

The safety of the public, which appears to be for a time put in hazard by their crimes, is often providentially redeemed from its peril, by the intervention even of other crimes and criminal motives operating upon the same class of dangerous delinquents.

It has thus happened in the present instance; and your crimes have been, in part, disclosed and frustrated through the means, and by the operation of the same passions, motives, and instruments, by which they were conceived, prepared, forwarded, and nearly matured for their ultimate and most destructive accomplishment.

It behoves all those whose destruction was according to the testimony of one of the witnesses, doomed to take place in the successful event of this conspiracy,—and which description of devoted persons, as it involves all of different principles from the conspirators, necessarily involves, I trust, the greatest part of the British community—to acknowledge the goodness of God, which has rendered so dangerous a project of public mischief hitherto, at least, abortive.

As to you, the convicted contrivers and instruments of this dangerous but abortive treason, it remains only for me to perform the last painful part of my official duty towards you. As to you, colonel Edward Marcus Despard, born as you were to better hopes, intended and formed as it should seem by Providence for better ends and purposes; accustomed as you heretofore have been to

better habits of life and manners, pursuing as you once did, together with the honourable compensations of your former life and services (and who have appeared as witnesses to your character during that period) the laudable objects of virtuous and loyal ambition; I will not at this painful moment point out to you how much all these considerations, and the degraded and ignominious fellowship in which you now stand, enhance the particular guilt of your crime, sharpening and imbittering as I know they must, in the same proportion, the acuteness and pungency of your present sufferings. I intreat you, however, by the memory of what you once were to excite, revive, and renew in your mind, an ardent and unceasing purpose and endeavour, during the short period of your remaining life, to subdue that callous insensibility of heart, of which, in an ill-fated hour, you have boasted, and to regain that salutary and more softened frame and disposition of the heart and affections, which I trust you once had, and which may enable you to work out that salvation, which, from the infinite mercy of God, may even yet be attainable by effectual penitence and prevailing prayers.

As to you, John Wood, Thomas Broughton, John Francis, Thomas Newman, Daniel Tyndall, James Sedgwick Wratten, William Lander, Arthur Graham, and John Macnamara, the sad victims of his seduction and example, or of your own wicked, discontented, and disloyal purposes, you afford a melancholy, but I hope an instructive example, to all persons in the same class and condition with yourselves—an example to deter them, by the calamitous consequences which presently await your crimes, from engaging in the same mischievous and destructive counsels and designs which have brought you to this ignominious and untimely end.

May they learn properly to value the humble, but secure blessings of an industrious and quiet life, and of an honest and loyal course of conduct,—all which blessings you have, in an evil hour, wilfully cast from you; and may they by so doing, and thus profiting by your example, increase at the same time the stock of public happiness and security, in the best and most effectual manner as well as their own.

The same recommendation which I have already offered to the leader in your crimes, and the companion of your present sufferings, as to the employment of the short remainder of your present existence, I again repeat, and earnestly recommend to every one of you; and may your ardent and effectual penitence

obtain for you all, hereafter, that mercy which a due and necessary regard to the interest and security of your fellow-creatures will not allow of your receiving here.

It only remains for me to pronounce the sad and painful sentence of the law upon the crime of which you are convicted; and that sentence is, and this Court doth adjudge,

That you the several prisoners at the bar, be severally taken from hence to the place from whence you came, and from thence be severally drawn on an hurdle to the place of execution, and there be severally hanged by the neck, but not until you are dead, but that you be severally taken down again, and that whilst you are yet alive, your bowels be taken out and burnt before your faces; and that afterwards your heads be severed from your bodies, and your bodies be divided each into four quarters, and your heads and quarters to be at the king's disposal. And may God Almighty have mercy on your souls.

Edward Marcus Despard.—I beg your lordship will allow me to say one or two words. Your lordship has imputed to me the character of being the seducer of these men; I do not conceive that any thing appeared in the trial or the evidence adduced against me, to prove that I am the seducer of these men.

John Macnamara.—I am now under sentence of death. I declare before God this moment, and may God never receive me if I ever spoke a word to Windsor since I was born, till I was brought into the house where the officer was.

On Monday the 21st of February, Edward Marcus Despard, John Wood, Thomas Broughton, John Francis, James Sedgwick Wratten, Arthur Graham, and John Macnamara, who were confined in the gaol for the county of Surrey at Horsemonger-lane, Newington, were, according to their sentence, drawn on a hurdle round the yard of the gaol. They then ascended the stair case to the top of the gaol, where the platform for executions is erected, and were severally hanged, after having been suspended for nearly half an hour they were cut down, and their heads were severed from their bodies; the executioner exhibiting each head separately to public view, said "this is the head of—a traitor,"—"this is the head of—another traitor" &c. The king graciously remitted the execution of the remainder of their sentence, and their bodies were delivered to their respective friends.

651. Proceedings on the Trial of JEAN PELTIER, Gentleman, for a Libel on Napoleon Buonaparté, First Consul of the French Republic; tried in the Court of King's Bench, before the Right Hon. Edward Lord Ellenborough and a Special Jury, on Monday February 21st: 43 GEO. III. A. D. 1803.

Court of King's-bench, Monday, Feb. 21st. 1803.

Counsel for the Crown.

Mr. Attorney General.—[The hon. SPENCER PERCEVAL, afterwards First Lord of the Treasury, and Chancellor of the Exchequer];

Mr. Solicitor General.—[Sir THOMAS MANNERS SUTTON, afterwards Lord Manners; successively a Baron of the Exchequer of England, and Lord Chancellor of Ireland];

Mr. Abbott.—[Afterwards Lord Chief Justice of the Court of King's Bench];

Mr. Garrow.—[Afterwards a Baron of the Exchequer.]

Solicitor.—Joseph White, esq.; Solicitor for the affairs of His Majesty's Treasury.

Counsel for the Defendant.

Mr. Mackintosh.—[Afterwards Recorder of Bombay];

Mr. Ferguson.

Solicitors.—Messrs. Slack and Gibson, of Lincoln's Inn.]

Names of Special Jurors, between our Lord the King and Jean Peltier.

Samuel Hawkins of Lemon-street, Whitechapel.

Samuel Liptrap, of Road-side.

John Robinson, of Wellclose-square.

Jesse Russell, of Goodman's-yard.

Luke Flood, of Road-side.

Henry Eggers, of Great Garden-street.

Elijah Goff, of Wellclose-square.

• Henry Bullock, of High-street, Whitechapel.

Thomas Proctor, of Holywell-street.

John Perry, of Blackwall.

John Cooper, of the same.

William Thompson, of Mile-end-green.

William Mason, of White Horse-lane.

William Clapeson, of New Road, St. George's.

Samuel Jackson, of Black-lane.

John Philip, of New Crane.

Thomas Everett, of Bedford-square.

George Shum, of Gower-street.

Joseph Benbridge, of Holborn.

Josiah Spode, of Lincoln's-inn-fields.

Thomas Bainbridge, of Bedford-row.

Thomas Waters, of the same.

Mark Sprott, of King's-road.

Henry Hughes, of the same.

David Mitchell, of John-street.

John Brooks, of the same.

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John Puget, of the same.

Joseph Burford, of Great James-street.

Thomas Kesteven, of Queen-square.

James Dalbiac, of the same.

William Moffat, of the same.

William Fraser, of the same.

Atkinson Bush, of Great Ormond street.

Robert Sherson, of the same.

Samuel Turner, of the same.

William Rowley, of Lamb's-Conduit-street.

John Newton, of the same.

John Peters, of Gloucester-street.

Samuel Bonham, of Hatton-garden.

Alexander Brodie, of Carey-street.

John Fuller, of Fitzroy-square.

Charles Boldero, of the same.

Charles Wilkins, of the same.

John Hele, of Charlotte-street.

Joseph Farrington, of the same.

Edmund Pepys, of the same.

Peter Dawson, of Goodge-street.

George Young, of the same.

Twenty-four of the above jurors having been challenged, the names of the special jurors upon the returned lists were called, eight of whom appeared out of the twenty-four [These are indicated in Italics in the above list]. Upon which Mr. Attorney-general prayed a *tales*, when the following names were called out from the common jury:

John Randus,

Thomas Marrol,

William Drew,

Richard Hughes.

Mr. Abbott then opened the pleadings, by which it appeared, that this was an information filed by his majesty's attorney-general against Jean Peltier, for libellous matters published by Jean Peltier, &c.—To which the defendant had pleaded "Not guilty," whereupon issue was joined.

The information was read as follows:

IN THE KING'S-BENCH.

MIDDLESEX.

THE KING,

UPON THE INFORMATION OF THE ATTORNEY-GENERAL, AGAINST

JEAN PELTIER.

Michaelmas Term, 43rd. George III.

INFORMATION

STATES—That before and at the times of the printing and publication of the scandalous

2 M

malicious and defamatory libels and libellous matters and things after mentioned there subsisted and now subsists friendship and peace between our sovereign lord the king and the French republic and the subjects of our said lord the king and the citizens of said republic and that before and at those times citizen Napoleon Buonaparté was and yet is First Consul of the said French republic and as such the chief magistrate of the same to wit at the parish of Saint Anne within the liberty of Westminster in the county of Middlesex

That Jean Peltier late of Westminster in the county of Middlesex gentleman well knowing the premises aforesaid but being a malicious and ill-disposed person and unlawfully and maliciously devising and intending to traduce defame and vilify the said Napoleon Buonaparté and to bring him into great hatred and contempt as well among the liege subjects of our said lord the king as among the citizens of the said republic and to excite and provoke the citizens of the said republic by force of arms to deprive the said Napoleon Buonaparté of his consular office and magistracy in said republic and to kill and destroy said Napoleon Buonaparté and also unlawfully and maliciously devising as much as in him the said Jean Peltier lay to interrupt disturb and destroy the friendship and peace subsisting between our said lord the king and his subjects and the said Napoleon Buonaparté the French republic and the citizens of the same republic and to excite animosity jealousy and hatred in said Napoleon Buonaparté against our said lord the king and his subjects on the 16th of August in the forty-second year of the reign of our sovereign lord George the third by the grace of God of the united kingdom of Great Britain and Ireland king defender of the faith at the parish of Saint Anne within the liberty of Westminster in the county of Middlesex unlawfully and maliciously did print and publish and cause and procure to be printed and published a most scandalous and malicious libel in the French language of and concerning the said Napoleon Buonaparté that is to say one part thereof to the tenor following, to wit

" LE 18 BRUMAIRE AN VIII.

" *Ode attribuée à Chénier*

" Quelles tempêtes effroyables
 " Grondent sur les flots déchainés
 " Dieux ! quels torrents épouvantables
 " Roulent ces rocs déracinés ?
 " Les fleuves n'ont plus de rivages
 " Couvert d'écume et de naufrages
 " L'océan mugit dans les airs
 " Sur ses fondements ébranlée
 " La terre va-t-elle écroulée
 " Se détacher de l'univers ?

" Ah plutôt pour se faire absondre !
 " D'une trop longue impunité
 " Les cieux peut-être avec la foudre
 " Vont protéger la Liberté

" Dieux du peuple que l'on opprime
 " Vengez cette auguste victime
 " De l'audacieux attentat
 " Qu'aux jours malheureux de Brumaire
 " Les lois ont dans leur sanctuaire
 " Vu consommer par un soldat

" Trop vain espoir de la vengeance !
 " Peuples livrés aux oppresseurs
 " N'auriez vous dans votre souffrance
 " Que vos bras pour libérateurs ?
 " Le ciel est aveugle ou barbare
 " Et lorsque sa foudre s'égare
 " Portée au hasard sur les vents
 " Qu'elle dévaste les campagnes
 " Ou frappe d'arides montagnes
 " Elle respecte les tyrans

" Jouets des flots et des orages
 " Voyez ces utiles vaisseaux
 " De leurs débris couvrir vos plages
 " Ou s'abîmer au fond des eaux
 " Tandis que la nef criminelle
 " Qui porte ce Corse rebelle
 " Déserteur des champs Africains
 " Trahquement vogue sur l'onde
 " Et de César annonce au monde
 " Et la fortune et les desseins

" De la France ô honte éternelle
 " César au bord du Rubicon
 " A contre lui dans sa querelle
 " Le Sénat Pompée et Caton
 " Et dans les plaines de Pharsale
 " Si la fortune est inégale
 " S'il te faut céder aux destins
 " Rome dans ce revers funeste
 " Pour te venger au moins il reste
 " Un poignard aux derniers Romains

" Mais sous quelles viles entraves
 " A succombé notre vertu !
 " Quoi ! l'univers nous voit esclaves
 " Sans que nous ayons combattu !
 " Au sein d'un sénat parricide
 " La noire trahison préside
 " Fière encore de nos revers
 " Le pouvoir sans appui sans force
 " Tombe à sa voix et c'est d'un Corse
 " Que le Français reçoit des fers !

And in another part thereof to the tenor following that is to say

" Déjà dans sa rage insolente
 " Le despote ose menacer
 " Tel des flots la vague écumante
 " Se brise contre le rocher.
 " Est-ce pour vous donner un maître
 " Est-ce pour couronner un traître
 " Que la France a puni ses rois ?
 " Non non l'ambition coupable
 " Saura qu'il n'est d'inviolable
 " Que les droits du peuple et ses lois

And in another part thereof to the tenor following that is to say

" *Vœu d'un bon Patriote au 14 Juillet, 1802.*
 " Quel fortune a fait le fils de Léticie !
 " Corse il devient Français Sa nouvelle patrie

" L'adopte le nourrit au rang de ses enfants
 " Et déjà lui promet les destins les plus
 grands!
 " Un orage survient sous l'effort des tempêtes
 " L'État est renversé les plus augustes têtes
 " Tombent tout est brisé le Français mal-
 heureux
 " Regrette en soupirant son erreur et ses vœux!
 " Napoléon paraît! de victoire en victoire
 " Il atteint en volant au faite de la gloire!
 " L'Orient l'Occident témoins de ses exploits
 " Par lui sont terrassés et reçoivent ses loix!
 " Le Nil avait frémi mais le sort qui l'en-
 traîne
 " Rappelle son vainqueur aux rives de la
 Seine
 " Cinq chefs ou cinq tyrans partageaient le
 pouvoir
 " Il arrache à leur mains le sceptre et l'en-
 censoir
 " Le voilà donc assis où s'élevait le trône!
 " Que faut-il à ses vœux? un sceptre? une
 couronne?
 " Consul il règle tout il fait défait des rois
 " Peu soigneux d'être aimé la terreur fait ses
 droits!
 " Sur un peuple avili jusqu'au rang des es-
 claves
 " Il regne il est despote on baise ses entraves
 " Qu'a-t-il à redouter? Il a dicté la paix
 " Des rois sont à ses pieds, mendiant ses
 bienfaits!
 " D'assurer en ses mains l'autorité suprême
 " On lui porte les vœux! Les Français des
 rois même
 " A le féliciter s'empressent humblement
 " Et voudraient en sujets lui prêter le ser-
 ment . . .
 " Il est proclamé chef et consul pour la
 vie . . .
 " Pour moi loin qu'à son sort je porte quel-
 qu'envie
 " Qu'il nomme j'y consens son digne succes-
 seur
 " Sur le pavois porté qu'on l'élise *empereur*
 " Enfin et Romulus nous rappelle la chose
 " Je fais vœu . . . dès demain qu'il ait l'a-
 pothéose!

" AMEN."

Which said scandalous and malicious words in the French language first above-mentioned and set forth being translated into the English language were and are of the same signification and meaning as these English words following that is to say

" What frightful tempests growl on the
 " unchained waves? Gods what dreadful tor-
 rents roll these uprooted rocks? The rivers
 " have no longer any banks the ocean covered
 " with foam and shipwrecks bellows in the
 " air shaken at its foundation is the earth
 " fallen going to detach itself from the uni-
 " verse Ah! rather to obtain their acquittal
 " for too long impunity, the heavens, perhaps,
 " are going to protect liberty with the thun-
 " der Gods of an oppressed people! Avenge

" this august victim of the audacious attempt
 " which on the unhappy days of Brumaire,
 " the laws in their sanctuary, saw completed
 " by a soldier!" meaning the said Napoleon
 Buonaparté " Too vain hope of vengeance!
 " Nations given up to oppressors have you in
 " your sufferings only your arms for deliverers?
 " The heaven is blind or cruel and when its
 " thunder flies carried by chance upon the
 " winds whether it lays waste the plains or
 " strikes the arid mountains it respects ty-
 " rants Behold those useful vessels the sport
 " of the waves and storms cover your coasts
 " with their wrecks or sink to the bottom of
 " the waters while the guilty ship that car-
 " ries that rebel Corsican" meaning the said
 Napoleon Buonaparté " deserter of the plains
 " of Africa sails tranquilly on the wave and
 " announces to the world the fortune and the
 " designs of Cæsar Oh eternal disgrace of
 " France! Cæsar on the bank of the Rubicon
 " has against him in his quarrel the senate
 " Pompey and Cato and in the plains of Phar-
 " salia if fortune is unequal if you must
 " yield to the destinies Rome in this sad re-
 " verse at least there remains to avenge you
 " a poignard among the last Romans But
 " under what vile fetters has our valour
 " fallen! What! the universe beholds us slaves
 " without our having combatted! In the
 " bosom of a parricide senate black treason
 " presides still fierce at our misfortunes power
 " without support and without force falls at
 " its voice and it is from a Corsican" meaning
 the said Napoleon Buonaparté " that the
 " Frenchman receives his chains"

And which said scandalous and malicious words in the French language secondly above mentioned and set forth being translated into the English language were and are of the same signification and meaning as these English words following that is to say

" Already in his insolent rage the despot"
 meaning the said Napoleon Buonaparté
 " dares to menace but the foaming wave of
 " the sea breaks itself against the rock. Is
 " it to give you a master—is it to crown a
 " traitor" meaning the said Napoleon Bu-
 naparté " that France has punished her
 " kings? No no guilty ambition shall know
 " that there is nothing inviolable but the
 " rights of the people and their laws"

And which said scandalous and malicious matters in the French language last above-mentioned and set forth being translated into English are as follows that is to say

" Wish of a good patriot on the fourteenth day of July in the year of our Lord one thousand eight hundred and two

" What fortune has the son of Lætitia"
 meaning the said Napoleon Buonaparté " ar-
 " rived at! A Corsican he becomes a French-
 " man his new country adopts him nourishes
 " him in the rank of its children, and already
 " promises him the greatest destinies A

" storm arises By the force of the tempests
 " the state is overturned the most noble persons
 " fall every thing is broken The unhappy
 " Frenchman regrets with sighs his error and his wishes
 " Napoleon appears flying from victory to victory he reaches the
 " summit of glory the east the west witnesses
 " of his exploits are vanquished by him and receive his laws
 " The Nile had shuddered but the lot that forces him on recalls his
 " vanquisher to the banks of the Seine Five chiefs or five tyrants shared the power
 " He forces from their hands the sceptre and the censer
 " Behold him then seated where the throne was raised
 " What is wanting to its wishes? A sceptre? a crown? Consul he governs
 " all he makes and unmakes kings Little careful to be beloved
 " terror establishes his rights over a people degraded even to the rank of slaves
 " he reigns he is despotic they kiss their chains
 " What has he to dread? He has dictated peace kings are at his feet
 " begging his favours He is desired to secure the supreme authority in his hands!
 " The French say kings themselves hasten to congratulate him and would take the oath
 " to him like subjects He is proclaimed chief and consul for life
 " As for me far from envying his lot let him name I consent
 " to it his worthy successor Carried on the shield let him be elected emperor!
 " Finally (and Romulus recalls the thing to mind) I wish that on the morrow he may
 " have his apotheosis Amen"

To the great scandal disgrace and danger of the said Napoleon Buonaparté to the great danger of creating discord between our said lord the king and his subjects and the said Napoleon Buonaparté the French republic and the citizens of the said republic in contempt of our said lord the king and his law to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

Second Count.—That said Jean Peltier as being such person as aforesaid and unlawfully and maliciously devising and intending as aforesaid afterwards to wit on the 26th August in the forty-second year of the reign aforesaid at the parish of St. Anne within the liberty of Westminster in the county of Middlesex unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel containing therein among other things divers other scandalous and malicious matters in the French language of and concerning said Napoleon Buonaparté in the form of an address to the French people according to the tenor following that is to say

" Citoyens la douceur de caractère et la probité qui vous distinguent entre toutes les nations me causent une inquiétude extrême
 " au moment où je viens vous entretenir de la tyrannie de notre dictateur
 " J'appréhende de ne pouvoir parvenir à

" vous faire croire qu'il y ait des hommes capables d'actions que vous jugez criminelles

" D'autant que celui que je vous dénonce a fondé tout son espoir sur le crime et la perfidie

" Et qu'il ne se croit en sûreté qu'en se mettant par sa malice tellement au-dessus de vos craintes que l'excès de la misère dans laquelle il retient ses esclaves leur ôte jusqu'à l'idée de recouvrer leur liberté

" J'appréhende encore que vous ne croyiez qu'il vaut mieux pour vous de vivre au milieu de ces périls en agissant avec prudence que d'obéir au sentiment qui vous prescrit de vous venger

" En effet les satellites de ce monstre les agents de sa tyrannie sont ou des hommes qui s'étaient fait autrefois un beau nom ou ceux dont les ancêtres leur ont laissé de nobles exemples à suivre les Liancourt les Choiseul-Praslin les Dormesson les Duroc d'Adhémar les Lameth les Noailles les Ségur les Deluynes les Mouniers les Fleuriu les Portalis les Barthelemy etc. Ces hommes chose étonnante! ont fait le sacrifice de leur propre liberté pour vous asservir ils aiment mieux nuire à leurs concitoyens que de réclamer leurs droits les plus sacrés et agir en hommes libres

" Ainsi ces belles races des Rohan des Montmorency des Larochehoucault des Dauguesseau des Duras des La Vauguyon des Boigelia offrent aujourd'hui des rejets que l'on dirait être nés pour la subversion du gouvernement établi et défendu par leurs ayeux et des titres que leur vertu leur avait acquis

" Et pourquoi avons-nous combattu contre la Prussée l'Autriche l'Italie l'Angleterre tout l'Allemagne et la Russie si ce n'est pour conserver notre liberté et nos propriétés et afin de n'obéir à personne mais seulement aux lois?

" Eh bien ce tigre qui ose se dire le fondateur ou le régénérateur de la France jouit du fruit de vos travaux comme d'une dépouille enlevée aux ennemis. Il n'est pas rassasié de la destruction du Roi, ni de tant de braves ne de tant de princes que la guerre a moissonnés il devient et plus avide et plus cruel dans des circonstances où la prospérité change chez la plupart des hommes la fureur en pitié

" Cet homme seul maître au milieu de ceux qui l'entourent a décrété des listes de proscription et fait exécuter des déportations sans jugement au moyen desquelles il existe des supplices pour des Français qui n'ont pas encore vu le jour. Des familles proscrites au-dehors de la France donnent le jour à des enfants opprimés avant de naître leur misère a commencé avant la vie

" Sa méchanceté s'accroît chaque jour chaque jour malgré la sécurité dont il jouit il entre dans de nouvelles fureurs et vous loin d'oser réclamer votre liberté la crainte

"d'aggraver votre esclavage vous glace et vous êtes soumis à la plus profonde terreur

"Il faut agir citoyens il faut marcher il faut s'opposer à ce qui se passe si vous voulez qu'il ne s'empare pas de toutes vos dépouilles surtout point de délais point de vœux inutiles ne comptez que sur vous. à moins que vous n'ayez la stupidité de croire qu'il se mettra en danger de gâilé de cœur en abdiquant par ennui ou par honte de la tyrannie ce qu'il possède à force de crimes

"Mais il s'est avancé au point qu'il ne garde plus à la gloire mais à sa propre sécurité et qu'il n'estime honorable que ce qui lui sert à conserver sa puissance. C'est ainsi qu'il a organisé récemment une compagnie dite de Mamelouks composée de Grecs de Maltais d'Arabes et de Cophtes ramas de bandits étrangers dont le nom et l'uniforme rappelant l'expédition insensée et désastreuse d'Égypte servent à le couvrir de honte mais qui ne parlant point notre langue et n'ayant aucun point de contact avec l'armée seront toujours les satellites du tyran ses muets ses sicaires et ses bourreaux

"Cette tranquillité et ce loisir embelli par la liberté que plusieurs gens de bien préféreraient à une résistance honorable n'existent donc point

"Français c'est en ce moment qu'il faut se résoudre à servir ou à commander à recevoir la terreur ou à l'inspirer

"Ne sommes-nous pas réduits à l'extrémité? Quelles institutions humaines peuvent arrêter le tyran? et les institutions divines ne sont-elles pas toutes corrompues? Le peuple Français qui était naguère l'arbitre des nations aujourd'hui dépourvu de sa souveraineté de sa gloire de ses droits incapable de remuer objet du mépris universel ne jouit pas même de la condition des esclaves et n'a pas comme eux ses aliments assurés

"Un seul homme a anéanti par un simple arrêté cette belle fédération de gardes nationales qui avait rendu de si nombreux et de si grands services à la patrie et qui était toute formée de citoyens Français. Quelques satellites et agents favoris tels que Séiyès et certains généraux ont reçu pour prix de leurs services le patrimoine dont l'innocent a été dépourvu

"Les lois la justice les finances l'administration les souverains de l'Europe enfin la liberté et la vie des citoyens tout est au pouvoir d'un seul homme. Vous voyez à chaque moment des arrestations arbitraires des juges punis pour avoir acquitté des citoyens des individus mis à mort après avoir été déjà acquittés par un jugement légal et des condamnations à mort lancées aux juges par la menace

"Rondez-vous à des hommes qui veulent être dignes de ce nom autre chose à faire qu'à

"venger leur injure ou à périr avec gloire La nature a marqué le terme de notre vie à tous, même aux plus puissants? Nul ne doit attendre la dernière extrémité sans avoir tenté quelque chose pour la liberté s'il ne veut passer pour une femelle timide et pusillanime

"Mais je suis un factieux dit Bonaparte je regrette les richesses que j'amassais dans les temps de troubles on dit que je désire la guerre parce que je réclame les droits dont nous devons jouir en temps de paix

"C'est-à-dire que vous ne pouvez vivre ni être en sûreté sous son gouvernement qu'en applaudissant aux prodigalités de Lucien et aux sophismes du scribe Rodéres en approuvant la proscription des innocents les emprisonnement et les déportations des meilleurs citoyens et la répartition des biens nationaux aux cohortes d'honneur comme si c'était un butin conquis sur les Allemands

"Mais le tyran m'objecte que j'ai acheté des biens de proscriers et c'est là justement le plus grand de ses crimes que ni moi ni quelque citoyen que ce soit n'ayons jamais pu nous croire en sûreté qu'en faisant le mal

"Eh bien! ces terres que la terreur m'a fait acheter, et dont j'ai payé le prix, je les restitue à ceux à qui elles appartiennent légitimement Je ne puis souffrir qu'il soit dit que des citoyens aient fourni une proie à d'autres citoyens

"Nous avons bien assez de ce que nous avons souffert dans nos fureurs, lorsque les Français se battaient entre eux à Lyon dans la Vendée et dans la Bretagne et que l'on tirait nos légions des frontières pour les faire marcher contre nous Qu'il soit mis un terme aux crimes et aux injures

"Ces malheurs font si peu d'impression sur Bonaparte qu'il se fait encore de titres de gloire des massacres de Toulon et de la journée du 13 Vendémiaire et que s'il était contrarié il ferait encore pis s'il le pouvait

"Je ne suis pas inquiet de l'opinion que vous avez de lui Je sais qu'il est généralement détesté Mais je crains votre plus ou moins d'énergie. Je redoute que n'étant point d'accord sur le chef que vous voudrez après lui vous ne vous laissiez surprendre non par ses promesses et ses dons qui ne sont rien et que vous méprisiez mais par votre apathie et qu'alors cet homme qui se repose toujours sur sa fortune ne parvienne à réussir sans cesse dans tout ce qu'il entreprend.

"Car à l'exception de quelques satellites affidés qui ont partagé la honte de sa fuite d'Égypte qui est-ce qui veut la même chose? quel est au contraire l'homme qui ne désire un changement total excepté dans l'étendue de ses frontières fruit de nos victoires? Je parle ici de l'armée dont le sang a été répandu pour enrichir un Berthier un Mûrat un Lucien un Joseph un Junot un

"Duroc un Lannes un Bourienne ou bien pour faire avoir un archevêché au prélat Boisselin vieille salope qui a toujours déshonoré les honneurs qu'on lui a conférés.

"C'est pourquoi j'ai la plus grande confiance dans nos armées toujours victorieuses qui après tant de fatigues et pour prix de tant de blessures ont fini par ne rein trouver qu'un tyran

"Il est vrai qu'en les a fait marcher à St. Cloud pour renverser de vive force le système de représentation nationale établi par la Convention Elles croyoient alors tout attirer à elles et recevoir enfin le milliard qui leur a si souvent été promis mais aujourd'hui qu'elles sont reléguées dans de tristes et insipides garnisons au fond des bois et des marais aujourd'hui qu'on les envoie périr comme des mouches à Cayenne, à la Guadeloupe et à St. Domingue et qu'elles ne voient qu'un petit nombre de favoris accaparer toutes les récompenses elles brûlent de jalousie et du désir de venger leur injure

"Et pourquoi marche-t-il en public avec autant de gardes à sa suite et avec tant d'orgueil? C'est que souvent la fortune seconde admirablement les grands criminels mais que son bonheur chancelle un instant autant il était redouté la veille autant il sera méprisé le lendemain à moins qu'on ne soit la dupe des noms de concorde et de paix qu'il a donnés à son crime et au parricide qu'il a commis sur sa patrie.

"Il a grand soin de dire que la tranquillité n'aura jamais lieu en France à moins que les pros crits ne restent dépouillés de leurs propriétés que les acquéreurs de domaines nationaux ne jouissent en sûreté de leur horrible proie que la justice ne soit à sa disposition et qu'il ne possède seul tous les droits qui jadis étaient l'apanage du peuple souverain

"Si vous voulez jouir de la paix et de la concorde approuvez toutes les révolutions et tous les meurtres qui ont eu lieu dans la République sanctionnez les lois qui vous ont été imposées recevez la tranquillité avec l'esclavage et faites voir par votre exemple à la postérité qu'on peut se rendre maître du peuple Romain en lui faisant répandre son propre sang.

"Pour moi si j'ai jamais cherché à être quelque chose c'était pour défendre la liberté et la dignité du peuple et les droits sacrés que nous ont laissés nos pères je n'ai jamais cherché à faire une fortune honteuse et j'ai préféré les orages d'une liberté difficile à obtenir à la tranquillité mortelle de l'esclavage

"Si vous êtes de mon avis Français présentez-vous et après avoir invoqué l'assistance des Dieux nommez Camille votre consul et votre chef dans l'entreprise hardie du recouvrement de votre liberté".

Which said scandalous and malicious

words in the French language last before mentioned and set forth being translated into the English language were and are of the same signification and meaning as these English words following that is to say

"Citizens the mildness of character, and probity that distinguish you among all nations occasion me the greatest uneasiness at the moment when I come to address you on the tyranny of our dictator" meaning the said Napoleon Buonaparté "I am fearful that I shall not be able to convince you that there are men capable of actions which you think criminal because the person" meaning the said Napoleon Buonaparté "whom I denounce to you has founded all his hope on guilt and perfidy and does not think himself safe but by placing himself through his malice so much above your fears that the excess of misery in which he keeps his slaves may take from them even the idea of recovering their liberty I am fearful also that you may think it better to live in the midst of these dangers by conducting yourselves with prudence than to obey the sentiment that directs you to avenge yourselves In reality satellites of this monster" meaning the said Napoleon Buonaparté "the agents of his tyranny are either men who had heretofore gained themselves a good reputation or those whose ancestors have left them noble examples to follow the Liancourts the Choiseul-Praslins the Dormessons, the Durocs D'Adhemer the Lameths the Noailles the Segurs the Deluynes the Mouniers the Fleuriens the Portalis's the Barthelemys &c. These men astonishing circumstance have made a sacrifice of their own liberty to enslave you they choose rather to hurt their fellow citizens than to reclaim their most sacred rights and act like freemen So the illustrious families of the Rohans of the Montmorencys of the Larochehoucaults of the Daguessaes of the Duras of the Vauguyons of the Boisselins present at this day descendants who may be said to be born for the subversion of the government established and defended by their ancestors and of the titles which their virtue had gained them And wherefore have we fought against Prussia Austria Italy England the whole of Germany and Russia if it be not to preserve our liberty and our properties and to the end that we might obey no one but the laws alone And now this tyger" meaning the said Napoleon Buonaparté "who dares to call himself the founder or the regenerator of France enjoys the fruit of your labours as of spoil taken from the enemy He is not satisfied with the destruction of the king nor of so many brave men nor of so many princes whom the war has mown down he" meaning the said Napoleon Buonaparté "becomes more covetous and more cruel in circumstances under which prosperity changes fury into pity among the greater part of mankind. This man" meaning the

said Napoleon Buonaparté "sole master in the midst of those who surround him has ordained lists of proscription and put in execution banishments without sentence by means of which there exist punishments for French who have not yet seen the light Proscribed families give birth out of France to children oppressed before they are born their misery has commenced before their life his wickedness (meaning the wickedness of the said Napoleon Buonaparté) increases every day in spite of the security he enjoys he (meaning the said Napoleon Buonaparté) enters into new passions and as to you far from daring to reclaim your liberty the fear of aggravating your slavery freezes you and you are subjected to the deepest terror You must act citizens you must march you must oppose what is passing if you wish that he (meaning the said Napoleon Buonaparté) should not seize upon all that you have Above all no delay no useless wishes reckon only upon yourselves unless indeed you have the stupidity to suppose that he will wantonly expose himself to danger by abdicating by weariness or shame of tyranny that which he holds by force of crimes But he is advanced to the point that he looks no more towards glory but to his own security and that he esteems nothing honourable but what conduces to the preservation of his power It is thus that he (meaning the said Napoleon Buonaparté) has organized a company of Mamelouks as they are called composed of Greeks Maltese Arabians and Copts a collection of foreign banditti whose name and dress recalling the mad and disastrous Egyptian expedition serve to cover him with shame but who not speaking our language nor having any point of contact with the army will always be the satellites of the tyrant" meaning the said Napoleon Buonaparté "his mutes his cut-throats and his hangmen That tranquillity then and that leisure adorned with liberty which many good men prefer to an honourable resistance exist not Frenchmen it is at this moment that you must resolve to serve or to command to receive terror or to inspire it Are we not reduced to extremity What human institutions can stop the tyrant" meaning the said Napoleon Buonaparté "And are not all the divine institutions corrupted The French people that was lately the arbiter of nations at this day despoiled of its sovereignty of its glory and its rights incapable of rousing itself the object of universal contempt enjoys not even the condition of slaves and is not like them assured of its victuals A single man" meaning the said Napoleon Buonaparté "has annihilated by one decree that noble federation of national guards that had rendered so many and such great services to its country and was entirely formed of French citizens Some satellites and favoured agents such as

Sieyes and certain generals have received for the price of their crimes the patrimony of which the innocent has been despoiled The laws justice the finances the administration the sovereigns of Europe in fine the liberty and the life of the citizens are all in the power of one man" meaning the said Napoleon Buonaparté "You see at every moment arbitrary arrests judges punished for having acquitted citizens individuals put to death after having been already acquitted by a lawful sentence and sentences of death extorted from judges by threats Remains there for men who would deserve that name any thing else to do but to avenge their wrongs or to perish with glory Nature has set the bounds of life to all even the most powerful No one ought to wait the last extremity without having attempted something for liberty if he would not pass for a timid and pusillanimous woman But Buonaparté says I am factious I regret the wealth that I amassed in the time of the troubles It is said that I desire war because I reclaim the rights that we ought to enjoy in time of peace That is to say that you cannot live nor be in safety under his" meaning the said Napoleon Buonaparté's "government but by applauding the prodigalities of Lucien and the sophisms of the scribe Roderer by approving the proscription of the innocent the imprisonment and banishment of the best citizens and the division of the national property among cohorts of honour as if it were plunder taken from the Germans But the tyrant" meaning the said Napoleon Buonaparté "objects to me because I have bought this property of the proscribed and that is precisely the greatest of his crimes that neither I nor any other citizen have ever been able to think ourselves in safety but by doing wrong And well! these lands that fear has made me buy and of which I have paid the price I restore them to those to whom they lawfully belong I cannot bear to have it said that citizens have furnished a prey to citizens We have full enough of what we have suffered in our madness when the French fought against each other at Lyons in La Vendée and in Brittany and when our legions were drawn from the frontiers to be marched against ourselves Let an end be put to crimes and injuries These evils make so little impression upon Buonaparté that he makes himself titles of honour from the massacres of Toulon and the day of the thirteenth of Vendémiaire and that if opposed he would do still worse if he could I am not uneasy with regard to the opinion that you have of him" meaning the said Napoleon Buonaparté "I know that he is generally detested but I am fearful as to the degree of your energy I am afraid that not being agreed upon the chief whom you would choose after him you may suffer yourselves to be misled not by his promises

"and his gifts which are nothing and which
 "you despise but by your own apathy and
 "that this man who always relies upon his
 "fortune may appear to succeed incessantly
 "in every thing that he undertakes For
 "with the exception of some confidential sa-
 "tellites that have shared the disgrace of his
 "flight who is there that desires the same
 "thing Who on the contrary is the man that
 "does not wish for a total change except in
 "the extent of our frontiers the fruit of our
 "victories I speak here of the army whose
 "blood has been shed to enrich a Berthier a
 "Murat a Lucien a Joseph a Junot a Duroc
 "a Lannes a Bourienne or to procure an arch-
 "bishoprick for the prelate Boisgelin a filthy
 "old woman who has always disgraced
 "the honours that have been conferred
 "upon him For this reason I have the
 "greatest confidence in our armies always
 "victorious who after so many fatigues and
 "for the price of so many wounds have
 "ended by finding nothing but a tyrant"
 "meaning the said Napoleon Buonaparté
 "It is true they were made to march to St.
 "Cloud to overthrow by main force the sys-
 "tem of national representation established
 "by the convention They thought then to
 "draw all to themselves and to receive at last
 "the milliard that has been so often promised
 "them but at this day when they are bu-
 "nished into dull and insipid garrisons at the
 "bottom of woods and marshes at this day
 "when they are sent to perish like flies at
 "Cayenne at Guadaloupe and at St. Do-
 "mingo and when they see only a small
 "number of favourites engross all the rewards
 "they burn with jealousy and with the desire
 "to avenge their wrongs And wherefore
 "marches he" meaning the said Napoleon
 "Buonaparté" in public with so many guards
 "in his suite and so much pride It is be-
 "cause fortune often wonderfully seconds
 "great criminals but let his good fortune
 "totter an instant as much as he was
 "dreaded in the evening so much will he be
 "despised on the morrow unless we are duped
 "by the names of concord and peace that he
 "has given to his crime and to the parricide
 "that he has committed on his country He"
 "meaning the said Napoleon Buonaparté
 "takes great care to say that tranquillity will
 "never have place in France unless the pro-
 "scribed remain deprived of their property
 "unless the acquirers of the national domains
 "enjoy their horrible prey in safety unless
 "justice be at his disposal and he alone
 "possess all the rights that heretofore were
 "the portion of the sovereign people If you
 "would enjoy peace and concord approve of
 "all the revolutions and all the murders that
 "have taken place in the republic sanction
 "the laws that have been imposed upon you
 "receive tranquillity with slavery and show
 "to posterity by your example that a man
 "may make himself master of the Roman
 "people by causing them to spill their own

"blood As for me if I have ever sought to
 "be any thing it is in order to defend the
 "liberty and the dignity of the people and the
 "sacred rights that our fathers have left us
 "I have never sought to make a disgraceful
 "fortune and I have preferred the storms of
 "a liberty difficult of attainment to the
 "deadly tranquillity of slavery If you are of
 "my opinion Frenchmen present yourselves
 "and after having invoked the assistance of
 "the gods name Camille your consul and
 "your chief in the bold enterprise of the re-
 "covery of your liberty" To the great
 "scandal disgrace and danger of the said
 "Napoleon Buonaparté to the great danger of
 "creating discord between our said lord the
 "king and his subjects and the said Napoleon
 "Buonaparté the French republic and the
 "citizens of the said republic to the evil ex-
 "ample of all others in the like case offending
 "in contempt of our said lord the king and
 "his laws and against the peace of our said lord
 "the king his crown and dignity

Third Count—That said Jean Peltier so
 being such person as aforesaid afterwards to
 wit on the 26th of August in the forty-second
 year of the reign aforesaid at the parish of
 St. Anne within the liberty of Westminster
 in the county of Middlesex unlawfully and
 maliciously did print and publish and cause
 and procure to be printed and published a
 certain other scandalous and malicious libel
 containing therein among other things divers
 other scandalous and malicious matters in the
 French language of and concerning said Na-
 poleon Buonaparté according to the tenor fol-
 lowing that is to say

"Eh bien ce tigre qui ose se dire le fonda-
 "teur ou le régénérateur de la France jouit du
 "fruit de vos travaux comme d'une dépouille
 "enlevée aux ennemis Il n'est pas rassasié
 "de la destruction du roi ni de tant de braves
 "ni de tant de princes que la guerre a mois-
 "sonnés il devient et plus avide et plus cruel
 "dans des circonstances où la prospérité
 "change chez la plupart des hommes la
 "sueur en pitié"

Which said scandalous and malicious words
 in the French language last above mentioned
 and set forth being translated into the Eng-
 lish language were and are of the same signifi-
 cation and meaning as these English words
 following that is to say

"And now this Tiger" meaning the said
 Napoleon Buonaparté "who dares to call
 "himself the founder or regenerator of France
 "enjoys the fruit of your labours as of spoil
 "taken from the enemy He is not satisfied
 "with the destruction of the king nor of so
 "many brave men nor of so many princes
 "whom the war has mown down he" mean-
 "ing the said Napoleon Buonaparté "becomes
 "more covetous and more cruel in circum-
 "stances under which prosperity changes
 "any into pity among the greater part of
 "mankind" To the great scandal disgrace
 and danger of the said Napoleon Buona-

parté to the great danger of creating discord between our said lord the king and his subjects and the said Napoléon Buonaparté the French republic and the citizens of the said republic in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

Fourth Count—That said Jean Peltier so being such person as aforesaid and unlawfully and maliciously devising and intending as aforesaid afterwards (to wit) on the 26th of August in the forty-second year of the reign aforesaid at the parish of St. Anne within the liberty of Westminster in the county of Middlesex unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel containing therein among other things divers other scandalous and malicious matters in the French language of and concerning the said Napoleon Buonaparté according to the tenor following that is to say

“ Il faut agir citoyens il faut marcher il faut s'opposer à ce qui se passe si vous voulez qu'il ne s'empare pas de toutes vos dépouilles surtout point de délais point de vœux inutiles ne comptez que sur vous à moins que vous n'ayez la stupidité de croire qu'il se mettra en danger de gaieté de cœur en abdiquant par ennui ou par honte de la tyrannie ce qu'il possède à force de crimes Mais il s'est avancé au point qu'il ne regarde plus à la gloire mais à sa propre sécurité et qu'il n'estime honorable que ce qui lui sert à conserver sa puissance C'est ainsi qu'il a organisé récemment une compagnie dite de Mamelouks composée de Grecs de Maltais d'Arabes et de Cophtes ramas de bandits étrangers dont le nom et l'uniforme rappelant l'expédition insensée et désastreuse d'Egypte servent à le couvrir de honte mais qui ne parlant point notre langue et n'ayant aucun point de contact avec l'armée seront toujours les satellites du tyran ses muets ses sicaires et ses bourreaux ”

Which said scandalous and malicious words in the French language last above-mentioned and set forth being translated into the English language were and are of the same signification and meaning as these English words following that is to say

“ You must act citizens you must march you must oppose what is passing if you wish that he ” meaning the said Napoleon Buonaparté “ should not seize upon all that you have Above all no delay no useless wishes reckon only upon yourselves unless indeed you have the stupidity to suppose that he will wantonly expose himself to danger by abdicating through weariness or shame of tyranny that which he holds by force of crimes But he is advanced to the point that he looks no more towards

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“ glory but to his own security and that he esteems nothing honourable but what conduces to the preservation of his power It is thus that he ” meaning the said Napoleon Buonaparté “ has organized a company of Mamelouks as they are called composed of Greeks Maltese Arabians and Copts a collection of foreign banditti whose name and dress recalling the mad and disastrous Egyptian expedition serve to cover him with shame but who not speaking our language nor having any point of contact with the army will always be the satellites of the “ tyrant ” meaning the said Napoleon Buonaparté “ his mutes, his cut-throats, and his “ hangmen ”

To the great scandal disgrace and danger of the said Napoleon Buonaparté to the great danger of creating discord between our said lord the king and his subjects and the said Napoleon Buonaparté the French republic and the citizens of the said republic in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

Fifth Count—That the said Jean Peltier so being such person as aforesaid and unlawfully and maliciously devising and intending as aforesaid afterwards (to wit) on the 26th August in the forty-second year of the reign aforesaid at the parish of Saint Anne within the liberty of Westminster in the county of Middlesex unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel containing therein among other things divers other scandalous and malicious matters in the French language of and concerning the said Napoleon Buonaparté according to the tenor following that is to say

“ Quelques satellites et agens favoris tels que Siéyes et certain généraux ont reçu pour prix de leurs forfaits le patrimoine dont l'innocent a été dépouillé Les lois la justice les finances l'administration les souverains de l'Europe enfin la liberté et la vie des citoyens tout est au pouvoir d'un seul homme Vous voyez à chaque moment des arrestations arbitraires des juges punis pour avoir acquitté des citoyens des individus mis à mort après avoir été déjà acquittés par un jugement légal et des condamnations à mort arrachées aux juges par la menace Reste-t-il à des hommes qui veulent être dignes de ce nom autre chose à faire qu'à venger leur injure ou à périr avec gloire ”

Which said scandalous and malicious words in the French language last above mentioned and set forth being translated into the English language were and are of the same signification and meaning as these English words following that is to say

“ Some satellites and favoured agents such as Siéyes and certain generals have received

"for the price of their crimes the patrimony of which the innocent has been despoiled. The laws justice the finances the administration the sovereigns of Europe in fine the liberty and the life of the citizens are all in the power of one man" meaning the said Napoleon Buonaparté "You see at every moment arbitrary arrests judges punished for having acquitted citizens individuals put to death after having been already acquitted by a lawful sentence and sentences of death extorted from judges by threats Remains there for men who would deserve that name any thing else to do but to avenge their wrongs or to perish with glory"

To the great scandal disgrace and danger of the said Napoleon Buonaparte to the great danger of creating discord between our said lord the king and his subjects and the said Napoleon Buonaparté the French republic and the citizens of the said republic in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

Where upon the said attorney-general of our said lord the king who for our said lord the king in this behalf prosecuteth for our said lord the king prayeth the consideration of the Court here in the premises and that due process of law may be awarded against him the said Jean Peltier in this behalf to make him answer to our said lord the king touching and concerning the premises aforesaid

Mr. Attorney General.—May it please your lordship; Gentlemen of the jury:—You are now, gentlemen, by the very distinct opening of my learned friend, fully in possession of the libel, which this information charges against the defendant: and the simple, and, as it seems to me, no very difficult question, which you will have to try, will be, whether or not the person who is charged to be the author of this publication is rightly brought before a jury, by a prosecution that charges such a publication as being a libel.

Gentlemen, it is impossible not to know, that there is a great deal of curiosity, and a great deal of interest attached to the subject of this trial. And indeed, I can scarcely cast my eyes around this court, and not observe that curiosity has assembled an audience of a description and appearance, which does not ordinarily attend the investigation of cases in courts of justice.* I should be extremely

* The following is an extract from the defendant's introduction to the original report of this trial: "I was also situated under other circumstances on which it is impossible for me to be silent. Such was the nature of my affair, that, throughout the week which preceded the trial, it was a general opinion at the exchange that my acquittal would be considered in France as tantamount to a declaration of war against the first consul; and that wagers had been laid, as I was in-

sorry, if I thought—which I certainly do not—that any part of that curiosity was excited with a view to the passages in this proceeding, that belong to me. I should be sorry for it, because disappointment is, on all occasions, an unpleasant sensation; and I should feel the more in being the occasion of such a sensation to such a respectable assemblage. Gentlemen, that that would be the effect, if any expectation existed with respect to what was to fall from me on this occasion, is unquestionable. If any person were so weak as to suppose, that, on any occasion, much less on such an occasion, he could hear from me any thing that would reward him for a strict attention, he would be extremely mistaken: for on this occasion, my duty, as well as my inclination, will not only lead me, but confine me to adhere strictly (unless I am driven against my purpose, unless I am thrown off my guard, and most reluctantly, in consequence of any thing that may be said by my learned friend) to the dry and dull examination of the intention, of the meaning, and of the tendency of the libel now under prosecution, and of the question of law as connected with the prosecution itself, namely, whether the law of this country, by what we know of it from the proceedings which have already taken place in this very court, by what we know of it from reason and principle, from the principles of common sense, of wisdom and policy, can possibly either defend as innocent, or consider as indifferent, a publication such as that which is the subject of the present prosecution.

In discussing this question, the principles to which I shall refer will be so obvious, and so plain, and the instances of similar proceedings to which I shall call your attention, are so notorious and so recent, that neither instruction nor amusement can possibly attend the examination of them.

Now, gentlemen, though there is no man living who more strongly feels than I do, or who is more ready to acknowledge than I am, the very distinguished talents of my learned friend who is to conduct this case on the part of the defendant,—though no man is more satisfied than I am of the abundant resources of his mind, of his most extensive knowledge,

"formed, that a verdict of *Not guilty* would lower the funds five per cent. Indeed, I have since known that stock-jobbers had at Westminster Hall persons to run with all possible rapidity to the Stock Exchange, with the news of the verdict, if it should be pronounced before the house was shut.

"It was under these unpropitious omens that I sat in the court of King's-bench, and my anxiety was naturally increased when the first objects which I saw there, were the aid-de-camp and the secretary of the ambassador of the first consul, placed, in some sort, *en faction*, beneath the box of the jurymen."

brilliant imagination, most acute understanding, and most cultivated taste—though no man can avail himself more ably than my learned friend of all the topics, which eloquence can supply,—yet I cannot help very much doubting whether *even he* can gratify much expectation or curiosity on this occasion, provided he confine himself to the points, WHICH THIS CASE NATURALLY AND REGULARLY PRESENTS FOR DISCUSSION. I say these points are, whether the defendant is, as I charge him, the author of this publication, what is the intention and the tendency of that publication, and what is the legal character of guilt or innocence that belongs to it. These, gentlemen, are the only questions, which this prosecution regularly presents for discussion. If indeed I could, for a moment, suppose my learned friend would lend himself in any degree to the spirit with which his client has edited and composed the publication, which I prosecute;—if I could for a moment suppose it would serve the interests of his client to defend him, as it were, by the republication of the very libel I charge against him;—if I could suppose he would be instructed by his client to come into this court, and in obedience to those instructions to go over, as it were, the same topics of declamation which this publication presents to you,—*then* undoubtedly there would be found an abundant and extensive field for his splendid talents, furnished by one of the most extraordinary and eventful epochs of the most eventful and extraordinary revolution, that ever the history of mankind has recorded.

But, gentlemen, I cannot think, if there were no other consideration—and I think there are other considerations which will influence my learned friend—but if there were no other consideration but that of ordinary discretion, that is not the course he will be led to pursue. I say discretion will be sufficient to guard us both against pursuing that course. For, what brings me here now before you is this: I prosecute this publication as a libel, because I say it has a tendency to endanger the security, the tranquillity, and the peace of the country; that is the charge that brings me here; that is the charge that brings the defendant here. And, gentlemen, if I am right in stating that the charge will be supported by this information; and if you should go along with me in thinking the defendant guilty of that charge;—when the question shall come for consideration, what punishment shall be inflicted on the person who is found guilty;—if it should occur to my learned friend, from the instructions of his client, that the legal proceedings of the first court of justice in this country shall be made the vehicle of slander, shall be made the means of aggravating that offence, and giving greater weight and extension to the libel I prosecute,—I think that I should ill discharge my duty to the public—that I should ill discharge my duty to the honour and the

character of the English administration of law, if I did not press it to the consideration of the Court in inflicting that punishment if I did not take the liberty to remind them, that they should take care that where the proceedings of a court of justice were made the vehicle of that mischief which they were intended to repress, the punishment inflicted should mark, not only to France, but to all the nations of Europe and to the world, that a British court of justice will not, with impunity, allow its proceedings to become the means of such extended defamation. Gentlemen, I say so, because from this consideration I am much led to suppose, that even the expectation which has been excited by my learned friend will be disappointed. But, to be sure, the disappointment or gratification of curiosity is no part of our business; our business is neither to satisfy nor disappoint curiosity; our business is, to satisfy justice, and to take care, as far as we can, that the law shall not be disappointed. And with that view I am desirous of stating to you not only what this present prosecution is, but what this prosecution is not. This is not the prosecution of a publication which lays before the world an historical narration of events that may have taken place in a neighbouring country where those events may, or may not, be accompanied with circumstances with just reflections on the conduct and characters of the persons who may have been the actors in the different scenes. This is not a prosecution meaning to bring to punishment the author of a narration of historical truth, which should not be complained of when written in the spirit of history, though it may give pain to others—if it be written with an honest zeal, though even with some degree of freedom approaching to licentiousness. Nor is it a prosecution for a piece of flippancy, of insolence or impudence towards those who, are the objects of it, and on which account it might be treated with contempt. But it is the case of a prosecution bringing into notice a publication, which, as it seems to me, must be considered originally, and from the first, as a libel and defamation—which has defamation for its sole object, or, at least, for its best object and its general object. The farther object of it, I think I shall satisfy you, is to excite the subjects of that magistrate whom our country recognizes, and with whom our country is at peace—to excite the subjects of that country to rebel against their chief magistrate *de facto*, and farther to excite them to his assassination and to his murder.

Gentlemen, that being the general object and character which I ascribe to the publication I prosecute, I have to state to you, more particularly, that it is charged by this information as having been published with the intention of traducing and defaming Napoleon Buonaparté, who is stated—as he is known—to be the first consul and chief magistrate of France; between whom and this country, at

the time of the publication, there was, and continues to be, peace and amity:—that it was published with the intention of bringing him into hatred and contempt, not only with the subjects of this country, but with the subjects of his own; and for the purpose of exciting the subjects of that country to rebel against him, and to remove him from the situation of power which he held; and farther, that it was published with the intention of exciting them to his assassination and his death, and likewise with the intention of disturbing and interrupting that peace which exists between that country and this. With this intention it is charged to have been published; with this tendency it is characterized as having been published.

Gentlemen; having stated the outlines and nature of this case, as to the state of the question on the law, I do not think I am at all called on to state any general principle of law which may apply, or at least strictly to define to what extent the government of a country, at peace with our own, may lawfully be made the subject of animadversion. I am not now called upon to lay down such a definition, but undoubtedly there are some broad distinctions on the subject. I have no difficulty in laying down this: for instance, I think no man can suppose that I mean to contend, that any publication professing to consider the conduct of a foreign government at peace with us, would be a libel; which, if applied to the government of *our own* country, would not be deemed to be such. Though the province of the historian be the detail of facts, yet if he introduced the fair discussion of the politician, or of the philosopher, on the facts and events he detailed, even this, unquestionably published fairly and *bonâ fide*, and not as a cover for slander and defamation, such a publication I should certainly never think of deeming the subject of prosecution. But, gentlemen, if the case be this; if defamation be the sole object of the publication, and if the publication has the necessary and direct tendency of exciting that degree of jealousy and hatred in the country to which the publication is directed against the country from which it issues, and to alienate the dispositions of that country from our own, and consequently to interrupt the intercourse of peace which subsisted between them, I think it is not likely any lawyer will stand up and say such a publication is not a libel, and that the author of it ought not to be punished. But even that is not this offence; the offence here charged to have been committed by the defendant is this—that his publication is a direct incitement and exhortation to the people of the French republic to rise up in arms against their first consul and chief magistrate, to wrest the power from the hands in which *de facto* it is placed, and to take away the life of the man who presides over them. Is it possible we can have any difficulty in supporting the proposition, that

such a publication is an offence against the law of this country?

I state it not merely on principle, but I shall mention cases that have already occurred. We had, not many years ago, an information against lord George Gordon,* for a libel on the queen of France. We had also an information against John Vint† for a libel against the emperor of Russia, upon which John Vint was convicted, though he was defended by my learned friend Mr. Erskine. The libel on his imperial majesty I shall read to you, and you may compare that libel with what has been charged as a libel by this information, and which has been read to you by my learned friend.

“The emperor of Russia is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency. He has lately passed an edict to prohibit the exportation of deals and other naval stores. In consequence of this ill-judged law, an hundred sail of vessels are likely to return to this country without freight.”

Now, that was the whole of that libel: but that libel was charged in the information—and was believed by the jury who tried it—to have been published with the intention of traducing the emperor of Russia, and of interrupting and disturbing the friendship subsisting between that country and this, and to the great danger of creating discord between our king and him. That was the offence with which that defendant was charged, and, although he had the advantage of Mr. Erskine’s abilities, he was convicted. And if you are satisfied that this was published with an intention at all similar to that which I ascribe to the defendant; and if you find that it has a tendency to disturb—that it has the effect of disturbing—the peace that subsists between the two countries, there is no doubt, both on principle and on these authorities, that it is a libel punishable by the law of this country.

Gentlemen, I shall now call your attention a little more particularly to the libel itself, which is the subject of prosecution; and I do not think it material to go over all the circumstances stated in the libel. My learned friend, by his opening of the pleadings, has rendered that unnecessary. Attending to the nature of it, and of its object and general tendency, it is proper I should tell you that there are two of these compositions, which I charge as being direct exhortations to the assassination of Napoleon Buonaparté himself. They are contained in the first number of the *Ambigu*. The publication is called, *The Ambigu, or atrocious and amusing Varieties*. It has on its frontispiece a sphinx, with a great variety of Egyptian emblematical figures, the meaning of which it may not be very easy to

* See the Case, vol. 29, p. 164.

† See the Case, vol. 27, p. 696.

discover, or material to inquire after. But there is a circumstance, that marks this publication, namely, the head of the sphinx, which has a crown on it. It is a head, which I, never having seen Buonaparté himself, cannot pretend to say was—but which, from the different pictures of him, one cannot fail at the first blush to suppose was—intended as the face of the first consul. Whether it is like him or not, I do not know, nor is it material. It is sufficient it was intended to be so. It is like the pictures, and the representations which the English have sold, as being likenesses of Buonaparté, and therefore the head of the sphinx in the frontispiece points pretty clearly to the first consul. It begins, like most other publications, with a prospectus, and the close of it I shall just bring to your knowledge. He says, “he will add but one word more, and that he will so manage all the materials, which he may employ in the edifice he is about to erect to the glory of Buonaparté, that he will take care they shall be worthy of the Temple.”

Now I think, looking at the picture at the head of the prospectus, and also taking the close of the prospectus, there can be no doubt that the object of this publication was Buonaparté, and the whole object and tendency of it to vilify him in the eyes of Europe and of the world. Gentlemen, there are two of these numbers that have been made the subject of prosecution—the first and the third. I shall direct your attention first, to that which is to be found in the third number of the *Ambigu*. That gentleman, has for its title, in the *Ambigu* itself, the Harangue of Lepidus against Sylla parodied, and is addressed to the people of France. It begins with stating the mildness of character and probity of the people, and expresses an apprehension that they, from their habits, would rather wish to live quietly under despotism than to vindicate their just rights and liberties, and avenge themselves on their oppressor. The sentiments contained in this part of the publication, lead them directly to revenge themselves. They are sentiments that would naturally lead them to act in their defence. I shall not read the whole of this speech, but shall leave it to my learned friend to detail. I shall only point out particular passages, which seem to me clearly to indicate the intention of the writer. After having stated the names of a great number of old families in France, and expressed his astonishment that such persons should have made a sacrifice of their own liberty, he says—“They choose rather to hurt their fellow-citizens than to reclaim their most sacred rights”—he asks them, “Wherefore have we fought against Prussia, Austria, Italy, England, and the whole of Germany and Russia, if it be not to preserve our liberty, and our properties, and to the end that we might obey no one, but the laws alone? And now this Tyger who dares to call himself the founder, or

“the regenerator of France, enjoys the fruit of your labours as spoil taken from the enemy.—This man, sole master in the midst of those who surround him, has ordained lists of proscription, and put in execution banishment without sentence, by means of which there are punishments for the French who have not yet seen the light. Proscribed families give birth out of France to children oppressed before they are born; their misery has commenced before their life. His wickedness increases every day: in spite of the security he enjoys, he enters into new passions; and as to you, far from daring to reclaim your liberty, the fear of aggravating your slavery freezes you, and you are subjected to the deepest terror.”

Having roused their passions by this address, he then goes on:—“You must act, citizens, you must march, you must oppose what is passing, if you wish that he should not seize upon all that you have. Above all, no delays, no useless wishes, reckon only upon yourselves, unless, indeed, you have the stupidity to suppose, that he will wantonly expose himself to danger by abdicating, through weariness, or shame of tyranny, that which he holds by force of crimes.”

Gentlemen, we are not considering what it is he holds. He is *de facto* the chief magistrate—the first consul—of France; he has been recognized by us in that character, and in that character we made peace with him. Is it possible then that such a publication can be innocent or inoffensive?

He then goes on, gentlemen, to state—“But he is advanced to such a point, that he looks no more towards glory, but to his own security, and that he esteems nothing honourable, but what conduces to the preservation of his power. It is thus that he has organized a company of Mameloukes, as they are called, composed of Greeks, Maltese, Arabians and Copts; a collection of foreign banditti, whose name and dress recalling the mad and disastrous Egyptian expedition, serve to cover him with shame; but who, not speaking our language, nor having any point of contact with the army, will always be the satellites of the tyrant, his mutes, his cut-throats, and his hangmen. That tranquillity then, and that leisure adorned with liberty, which many good men prefer to an honourable resistance, exist not. Frenchmen, it is at this moment, that you must resolve to serve or to command, to receive-terror or to inspire it. Are we not reduced to extremity? What human institution can stop the tyrant?”

Then he states, that the “laws, justice, the finances, the administration, the sovereigns of Europe, in fine, the liberty and the life of the citizens, are all in the power of one man. You see at every moment arbitrary arrests, judges punished for having acquitted citizens, individuals put to death after

"having been already acquitted by a lawful sentence, and sentences of death extorted from judges by threats. Remains there for men, who would deserve that name, any thing else to do, but to avenge their wrongs, or to perish with glory?"—And then, gentlemen, after detailing a great number of other circumstances which reflect on the character and credit of the first consul; he concludes with this indignant irony—"If you would enjoy peace and concord, approve of all the revolutions and all the murders that that have taken place in the republic, sanction the laws, that have been imposed on you; receive tranquillity with slavery, and show to posterity, by your example, that a man may make himself master of the Roman people by causing them to spill their own blood. As for me, if I have ever sought to be any thing, it is in order to defend the liberty, and the dignity of the people, and the sacred rights that our fathers have left us. I have never sought to make a disgraceful fortune, and I have preferred the storms of a liberty, difficult of attainment, to the deadly tranquillity of slavery. If you are of my opinion, Frenchmen, present yourselves; and after having invoked the assistance of the gods, name Camille your consul, and your chief, in the bold enterprise of the recovery of your liberty."

Gentlemen, having read these passages to you, let me ask you, whether I characterize this publication too strongly, when I describe it to be not only a gross libel against the chief magistrate of France, but a direct exhortation to that country to rebel against him? That is the character I ascribe to this publication.

As to the other two publications, which are contained in the first number of the *Ambigu*, they describe the character of Buonaparté himself, and convey a direct exhortation to assassinate that general. The first is an ode, and there are passages extracted from it. It begins with a description as if all nature were in a storm; or as if the elements of nature were breaking loose: and there is excited in the author an expectation and hope that the heavens mean to revenge the cause of liberty. And there is an address to the gods of an oppressed people, and a prayer that they would "avenge this august victim of the audacious attempt, which on the unhappy days of Brumaire the laws in their sanctuary saw completed by a soldier," namely, the attempt which put him at the head of the French Republic. He falls back again into despair—"Too vain hope of vengeance! Nations given up to oppression, have you in your sufferings only your arms for deliverers? Heaven is blind or cruel, and when its thunder flies, carried by chance upon the winds, whether it lays waste the plains or strikes the arid mountains, it respects tyrants."

This reflection is illustrated by the circumstance of storms and tempests dashing to pieces

the vessels of merchants and navigators, and sparing what it describes as the guilty ship of that rebel Corsican, sailing tranquilly through the ocean, and announcing to the world the fortune and designs of Cæsar.

The author, in this publication, points to that to which I wish to direct your attention, namely, a comparison between the state of Rome, and the state of France, when Cæsar was dictator, and when Buonaparté was consul. It begins with these words.—"Oh! eternal disgrace of France! Cæsar on the banks of the Rubicon has against him in his quarrel the Senate, Pompey, and Cato, and in the plains of Pharsalia, if fortune is unequal, if you must yield to the destinies, Rome, in this sad reverse, at least, there remains to avenge you a poniard among the last Romans. But under what vile fetters is our valour fallen? What! The universe beholds us slaves, without our having combated; in the bosom of a parricide senate black treason presides still fierce at our misfortunes; power, without support and without force, falls at its voice, and it is from a Corsican that the Frenchman receives his chains."

"Already in his insolent rage the despot dares to menace, but the foaming wave of the sea breaks itself against the rock. Is it to give you a master? Is it to crown a traitor, that France has punished her kings? No; guilty ambition shall know that there is nothing inviolable but the rights of the people, and their laws!"

Now, gentlemen, let me ask any man of common sense, who looks at what is represented in this poem; let me ask, whether any body can disguise from himself the object of the author, in writing this contrast of Rome and Buonaparté? I would ask any honest and unprejudiced mind, whether he could have done it with any other view than to point out to the people of France the example of assassination and of murder?

The other publication, which is charged as being libellous, is entitled "the Wish of a good Patriot on the 14th Day of July." It concludes as if it were a prayer, with the emphatical word, "Amen."

This wish concerns the fortunes of Buonaparté, takes him up from the first;—from being a Corsican he becomes a Frenchman, his new country adopts him, nourishes him in the rank of its children, and already promises him the greatest destinies. "A storm arises. By the force of the tempests the state is overturned, the most noble persons fall! every thing is broken. The unhappy Frenchman regrets with sighs, his error and his wishes. Napoleon appears." The author describes him as flying from victory to victory in Italy, in Egypt, and traces him back again to France. Then he becomes consul, and forces from their hands the sceptre and the censor; and then he describes him as already seated on the throne, and wanting nothing to his wishes. He makes

and unmakes kings, indifferent as to what he does, provided he is but feared, and provided he exercises despotic power over a people degraded even to the rank of slaves. "Kings are at his feet begging his favour. He is desired to secure the supreme authority in his hands. The French, nay, kings themselves, hasten to congratulate him and would take the oath to him like subjects. He is proclaimed chief consul for life. As for me, far from envying his lot, let him name, I consent to it, his worthy successor. Carried on the shield, let him be elected emperor! Finally (and Romulus recalls the thing to his mind) I wish that on the morrow he may have his apotheosis, Amen."

Now, gentlemen, he says, Romulus suggests that idea. The fate that is ascribed to him is well known to all of us. According to ancient history, he was assassinated. This last publication is entitled, "The Wish of a good Patriot on the 14th Day of July, in the year of our Lord one thousand eight hundred and two," and holds out to the people of France, what it is a good patriot should do, and how he should act, by representing to their minds the fate of Romulus; and presents that as an example for their imitation. They are to act on that as an example. I think you will not be induced to believe I am describing it by an improper character, when I say that this publication is a most infamous and gross libel, disgraceful to the English press, and which contains, at the same time, an exhortation to the people of France to rebel against their first consul, and to assassinate him.

Gentlemen, if my learned friend meets me on these points; and if he, by any ingenuity, can induce you to believe this is all historical narration, that it is only free legal discussion, we meet fairly on that plain issue, which you are to decide between us. But let me not be told, I am an enemy to the liberty of the English press, when I prosecute the abuse of it, to protect it from ignominy and disgrace, and to check its licentiousness, when applied to such base purposes as that of instigating to assassination.

Gentlemen, I shall not trouble you with many farther observations on the subject. I stated to you, at first, what I conceived to be the object and tendency of this work; and now let me put it to you, whether you do not think with me, that this is a crime in this country?—Whether the exhortation to assassination, in time of peace, is not a very high offence? If it were in time of war, I should have no difficulty in stating, that there is something so base, so disgraceful—there is something so contrary to every thing that belongs to the character of an Englishman—there is something so immoral in the idea of assassination, that the exhortation to assassinate this or any other chief magistrate, would be a crime against the honourable feelings of the English law. What effect, then,

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must it have, when, instead of being at war, we are at peace with that sovereign? Do not let any idle declamation on that denomination impose upon your minds. Whether the present libel was directed against a monarch sitting on his throne, from long hereditary descent, or whether he is a person raised to this power by the revolution, from the choice of that country, or from any other cause, it makes no difference; he is *de facto* the chief magistrate, and is to be respected by those, who are the subjects, of that country and who owe a temporary allegiance to him he is to be respected as if his ancestors had enjoyed the same power for a number of generations. Perhaps I may hear of publications in the *Moniteur* reflecting on our government. What have we to do with that? I am standing here, for the honour of the English law, and of the English nation. I state this to be a crime, and as such have brought it before an English jury. And if any other country think that they can prosper by such publications as this, let *them* have the benefit of it, but do not let *us* have the disgrace.

EVIDENCE FOR THE PROSECUTION.

John Gage.—Examined by
Mr. Solicitor General.

John Gage, I believe you are a clerk to Mr. White, the solicitor to the Treasury?—I am a messenger.

Will you look at these papers? look at both of them. Where did you get these papers?—I bought them; the one on the 16th of August last, and the other on the 26th of the same month, at Mr. De Boffe's, who is a bookseller in Gerard-street.

Did you mark them, so as to know them again?—I marked both of them.

Did you buy them of himself?—I bought the first, marked No. 1, of Mr. De Boffe himself, and the other, which is No. 3, I bought of a woman, on the 26th of August.

Mr. Garrow.—Put in the London Gazette, of the 26th of April last, containing his majesty's Proclamation on signing the Definitive Treaty, and a copy of the Definitive Treaty as published.

That will show that Napoleon Buonaparté, at the time of the publication of this libel, was first consul and chief magistrate of France; and also that peace subsisted between the two countries.

Mr. Mackintosh.—I admit that Buonaparté was first consul and chief magistrate at that time.

Mr. Fergusson.—Mr. Lowten, will you tell me what the date of that Treaty is?

Mr. Lowten.—The 26th of April, 1802.

Mr. Fergusson.—I only wanted to know how long this peace has lasted.

(The King's Proclamation was here read.)

Joseph de Boffé sworn.—Examined by
Mr. Garrow.

Mr. de Boffé—

Mr. *Ferguson* interposing.—Mr. de Boffé you need not answer.

Mr. *Garrow*.—You cannot know what I am going to ask him. The first question, Sir, I mean to ask you is, whether you are a bookseller or not?—Yes.

Do you deal much in French publications?—Yes.

You import French publications from France to this country?—Yes.

Do you publish French publications for exportation from this country to France?—Yes; when I receive orders to that effect.

Are you acquainted with the defendant, M. Peltier?—Yes.

You have got some publication in your hand; is that the Ambigu?—Yes.

Did you receive any orders from M. Peltier respecting that publication?

Mr. *Ferguson* interposing. You need not answer that question.

Mr. *Garrow*.—Did you attend to the order of M. Peltier, respecting that publication? What order did you receive?—M. Peltier published this work, and employed me to dispose of it, on his account, as well as other booksellers.

Lord *Ellenborough*.—The act of selling it, or publishing it, is sufficient proof.

Mr. *Garrow*.—The witness cannot be at all affected by these questions, as he has suffered judgment to go by default.

Mr. *Mackintosh*.—From the situation in which he stands, he may refuse to answer any question about publications.

Lord *Ellenborough*.—Having suffered judgment to go by default, he comes plainly apprized of the situation in which he stands. He is not bound to answer any question that will criminate himself.

Mr. *Garrow* to the witness.—M. Peltier then ordered and employed you? I do not ask you, whether you published one of them. Did he tell you who was the author of it?—No, sir.

What did he say of it?—M. Peltier, to the best of my recollection, did not say to me, but I always understood he was the author.

I do not ask you, what you understood; you will tell us what transactions you had with M. Peltier?—I had none whatever, but that of a common publisher.

But I do not know the business of a common publisher, unless you will tell me?—His business is to sell his books, and to account to him for what is sold.

Did you account to M. Peltier for the sale of any number of the Ambigu?—Yes, sir.

Mr. *Mackintosh*.—An information has been filed against the witness for this publication, I know he has allowed judgment to go by default, but I submit these questions ought not

to be put to him to answer. The only object of them is to draw from him a confession that he was the publisher of it.

Lord *Ellenborough*.—He has been already apprized. I understood him advisedly to answer. I think he was not under compulsion to answer; but if he does answer, I must take it. I think it is the office of the judge to suggest this to a witness, that he is not bound to answer any thing which will criminate himself; and if a judge were not to remind a witness of that circumstance, he would neglect his duty; I have told him.

Mr. *Garrow* to the witness.—You have accounted for a certain number of the Ambigu, sold by you, by his order. You have leave from me not to answer that question, if you please; but you may answer it if you please.—But I will not answer it.

Did you at any time receive of M. Peltier any number of the Ambigu? I do not see what is the number there?—I believe I am not to answer.

I do not ask you what you did with them; but did you at any time receive any number of the Ambigu? That is no crime?—I received them always through the medium of M. Peltier's binders.

Did you see him afterwards on the subject?—Almost daily.

Did you converse with him on the subject? Did you tell him you had received them from the binders, and show them to him?—Certainly.

Did he see them lying in your shop in great numbers?—He did.

Did he inquire of you how the sale went on from time to time?—Yes.

Did you inform him?—Of course.

Did you finally account to him? I do not ask you whether you sold one of them. Did you account to him for the sale made by others?—

Mr. *Mackintosh*.—I submit that that is putting the question in another shape. As the witness is not an Englishman, he is not perfectly aware of the meaning of the observations that have been made on these questions.

Lord *Ellenborough*.—He says, I informed him how the sale went on. You have therefore only to identify the thing sold.

Mr. *Garrow* to the witness.—No. 1, and No. 3, are the two publications on which this prosecution is founded.—

Lord *Ellenborough* to the witness.—Are these two of the numbers you received in the manner you described?—I am not sure, if these are two of the identical papers. I have sold these numbers.

Mr. *Mackintosh*.—He does not understand.

Mr. *Garrow* to the witness.—Did you sell any of them, which you did not receive from M. Peltier? Did you sell any, which you did not receive on his account?—All that I sold were on M. Peltier's account.

Charles R. Broughton examined by
Mr. Garrow.

What is your christian name?—Charles.

You are intimately acquainted with the french language?—I understand it so as to be able to read this publication in French.

I believe a translation of the french has been put into your hands; will you have the goodness to look at that translation [handing it up] and tell me whether it is a correct translation of the libel?—This is one I have seen before. I think it is a very correct translation, to the best of my understanding.

Mr. Garrow.—My lord, we propose that it should first be read in the original French by Mr. Broughton, and then that the English translation should be read by Mr. Lowten.

Mr. Mackintosh.—We do not wish to hear it read in French, as it may save some time. I believe the tenor of the French is perfectly correct as far as at present I am aware.

Lord Ellenborough.—Mr. Mackintosh, I do not think we ought to take your admission so hardly. And if you have any observations to make, now is the proper time to make them.

Mr. Mackintosh.—My lord, on consideration we do not think ourselves at liberty to admit the correctness of the original, and therefore Mr. Broughton must read the French. If you please, sir, to read it slowly and audibly.

Witness.—Let me have the one I marked.

Mr. Mackintosh.—Will you have the goodness to give us the information?

Mr. Garrow to the witness.—Now, sir, will you have the goodness to read it in French?

[Mr. Broughton read the whole of what was charged to be a libel, in the original, while the learned counsel for the defendant looked at the information, to see it was properly set forth.]

Mr. Garrow.—Will you read the title-page of the book in English?

Witness.—“The Ambigu, or amusing and atrocious Varieties, a Journal of the Egyptian kind.”

Will you have the goodness, sir, to read next, the last paragraph of the prospectus in English?

Witness.—“We shall not extend this prospectus any farther; we would rather promise little and perform much, than expose ourselves to the reproach of having elevated an immense portico for the entry to a paltry house. We shall only add one word, to say that the materials which we shall employ for the construction of the edifice, we are raising to the glory of Buonaparté, shall be worthy of the Temple.”

Now, Mr. Lowten, you will read the translation, which this gentleman has proved to be a correct one.—Mr. Lowten read the translation. When he came to that part of it, where the son of Lætitia is introduced, and

who, according to information, means Buonaparté—

Lord Ellenborough.—How can you prove these innuendos?

Mr. Attorney General.—I apprehend they are already understood.

Lord Ellenborough.—The jury may infer them from the context.

Mr. Attorney General.—I shall leave it to the jury to infer, that by the son of Lætitia, and the Corsican, was meant Buonaparté.

Mr. Mackintosh.—There is no evidence that Buonaparté is the son of Lætitia.

Lord Ellenborough.—He is only said to be described under that phrase.

Mr. Mackintosh.—My knowledge in genealogy is not so great as to enable me to say that the son of Lætitia means Buonaparté.

When Mr. Lowten, in reading the translation, came to these words, “his apotheosis”—

Mr. Mackintosh to Mr. Broughton.—Will you have the goodness to look at the original, and say whether that part be faithfully translated?

Witness.—It means his, or the, apotheosis. Here I should think it means his apotheosis. I so understand it.

Mr. Mackintosh.—I do not ask your construction of it; but I ask you whether l’apothéose, means his apotheosis?—It means the apotheosis; and I apprehend, under other circumstances, apotheosis in general.

I ask you what is the literal translation of it?—It means the apotheosis.

Mr. Mackintosh.—That is not the translation.

Lord Ellenborough.—I understand the witness to say, “this is a faithful translation of it, to the best of my understanding.” I take that to be evidence. If you can get any body to say the contrary—

Mr. Ferguson.—He has sworn it means the apotheosis, and in the translation it is his apotheosis.

Lord Ellenborough.—It ought to be according to the tenor of the French. It ought to be a faithful translation of the sense of the original. This is a matter of evidence; and if you can call persons, who will swear that this is not a faithful translation, you are at liberty to do it.

Mr. Mackintosh.—He has said, that according to his construction of the context, the translation is faithful. That is matter of opinion; but it is not strictly evidence. He says, the literal meaning of the original is, the apotheosis, or apotheosis in general.

Lord Ellenborough.—I cannot enter into these discussions. It is matter of evidence.

Mr. Attorney General to the witness.—Look at the French and the English, and tell me whether the English is a faithful translation of the French?—Certainly.

Mr. Ferguson.—They have referred to the first number of the Ambigu; I wish to have other parts of that number read, to show the intent and meaning of the author.

Lord *Ellenborough*.—You had better read the whole of it.

Mr. *Fergusson*.—Look to the second page of the first number, first column—[reads.]

Mr. *Fergusson*.—If you will have the goodness to look to the second column of the 40th page—"Nous serons"—

Mr. *Attorney General*.—Look at the second column of the 50th page.—Look at the first column, second paragraph, of the 5th page—[reads.]

Mr. *Fergusson*.—Will you read the title of the Ode?—[reads.]

Mr. *Fergusson*.—Look at the second column of the second page near the bottom of the page. I wish you to go on to where the translation leaves off.—[The witness reads it.]

Mr. *Attorney General*.—Is that a faithful and literal translation?—It is not a literal translation.

Mr. *Mackintosh*.—Is it faithful?

Witness.—Yes; I think it is.

Mr. *Fergusson*.—Will you have the goodness to go to page 11th, first column—"The following verses," &c.

Mr. *Fergusson*.—I have done as to the first number.

Mr. *Attorney General*.—You will go to the second number.

Mr. *Fergusson*.—I wish the introduction to the Address to be read.

Mr. *Attorney General*.—It makes very little difference whether it is read or not.

Mr. *Fergusson*.—Second column, page 55, look to that, which introduces the Address, which is the subject of this information—[reads it.]

Mr. *Fergusson*.—Then what is the title of the Address?

Witness.—The Harangue of Lepidus, &c.

Mr. *Mackintosh*.—Read the French of the third number.

Mr. *Attorney General*.—My lord, there is a translation of this—[read by Mr. *Lowten*.]

Mr. *Attorney General*.—My lord, the other counts are only extracts of the same matter.

Mr. *Fergusson*.—I will not trouble your lordship with any more points.

Mr. *Attorney General*.—That is my case, my lord.

DEFENCE.

Mr. *Mackintosh*.—May it please your Lordship; Gentlemen of the Jury;—The time is now come for me to address you on behalf of the unfortunate gentleman who is the defendant on this record.

I must begin with observing, that though I know myself too well to ascribe to any thing but to the kindness and good-nature of my learned friend the attorney general, the unmerited praises which he has been pleased to bestow on me, yet I will venture to say, he has done me no more than justice in supposing that in this place, and on this occasion, where I exercise the functions of an inferior minister of justice—an inferior minister in-

deed, but a minister of justice still—I am incapable of lending myself to the passions of any client, and that I will not make the proceedings of this court subservient to any political purpose.

Whatever is respected by the laws and government of my country shall, in this place, be respected by me. In considering matters that deeply interest the quiet, the safety, and the liberties of all mankind, it is impossible for me not to feel warmly and strongly; but I shall make an effort to control my feelings, however painful that effort may be, and where I cannot speak out, but at the risk of offending either sincerity or prudence, I shall labour to contain myself and be silent.

I cannot but feel, gentlemen, how much I stand in need of your favourable attention and indulgence. The charge which I have to defend is surrounded with the most invidious topics of discussion; but they are not of my seeking:—the case, and the topics which are inseparable from it, are brought here by the prosecutor.

Here I find them, and here it is my duty to deal with them, as the interests of Mr. Peltier seem to me to require. He, by his choice and confidence, has cast on me a very arduous duty, which I could not decline, and which I can still less betray. He has a right to expect from me a faithful, a zealous, and a fearless defence; and this his just expectation, according to the measure of my humble abilities, shall be fulfilled. I have said, a *fearless* defence;—perhaps that word was unnecessary in the place where I now stand. Intrepidity in the discharge of professional duty is so common a quality at the English bar, that it has, thank God! long ceased to be a matter of boast or praise. If it had been otherwise, gentlemen, if the bar could have been silenced or overawed by power, I may presume to say, that an English jury would not this day have been met to administer justice. Perhaps I need scarce say that my defence shall be fearless, in a place where fear never entered any heart but that of a criminal: but you will pardon me for having said so much, when you consider who the real parties before you are.

Gentlemen, the real prosecutor is the master of the greatest empire the civilised world ever saw. The defendant is a defenceless proscribed exile. He is a French royalist, who fled from his country in the autumn of 1792, at the period of that memorable and awful emigration when all the proprietors and magistrates of the greatest civilised country of Europe were driven from their homes by the daggers of assassins; when our shores were covered, as with the wreck of a great tempest, with old men, and women, and children, and ministers of religion, who fled from the ferocity of their countrymen as before an army of invading barbarians.

The greater part of these unfortunate exiles, of those I mean who have been spared by the sword, who have survived the effect of pesti-

lential climates or broken hearts, have been since permitted to revisit their country. Though despoiled of their all, they have eagerly embraced even the sad privilege of being suffered to die in their native land.

Even this miserable indulgence was to be purchased by compliances, by declarations of allegiances to the new government, which some of these suffering royalists deemed incompatible with their conscience, with their dearest attachments and their most sacred duties. Among these last is M. Pekier. I do not presume to blame those who submitted, and I trust you will not judge harshly of those who refused. You will not think unfavourably of a man who stands before you as the voluntary victim of his loyalty and honour. If a revolution (which God avert) were to drive us into exile, and to cast us on a foreign shore, we should expect, at least, to be pardoned by generous men, for stubborn loyalty, and unseasonable fidelity to the laws and government of our fathers.

This unfortunate gentleman had devoted a great part of his life to literature. It was the amusement and ornament of his better days. Since his own ruin, and the desolation of his country, he has been compelled to employ it as a means of support. For the last ten years he has been engaged in a variety of publications of considerable importance; but, since the peace, he has desisted from serious political discussion, and confined himself to the obscure journal which is now before you; the least calculated, surely, of any publication that ever issued from the press, to rouse the alarms of the most jealous government; which will not be read in England, because it is not written in our language; which cannot be read in France, because its entry into that country is prohibited by a power whose mandates are not very supinely enforced, nor often evaded with impunity; which can have no other object than that of amusing the companions of the author's principles and misfortunes, by pleasantries and sarcasms on their victorious enemies. There is, indeed, gentlemen, one remarkable circumstance in this unfortunate publication; it is the only, or almost the only journal, which still dares to espouse the cause of that royal and illustrious family, which but fourteen years ago was flattered by every press, and guarded by every tribunal in Europe. Even the court in which we are met affords an example of the vicissitudes of their fortune. My learned friend has reminded you, that the last prosecution tried in this place, at the instance of a French government, was for a libel on that magnanimous princess, who has since been butchered in sight of her palace.

I do not make these observations with any purpose of questioning the general principles which have been laid down by my learned friend. I must admit his right to bring before you those who libel any government recognised by his majesty, and at peace with

the British empire. I admit that whether such a government be of yesterday or a thousand years old, whether it be a crude and bloody usurpation or the most ancient, just, and paternal authority upon earth, we are *here* equally bound by his majesty's recognition to protect it against libellous attacks. I admit that if, during our usurpation, lord Clarendon had published his History at Paris, or the marquis of Montrose his verses on the murder of his sovereign, or Mr. Cowley his Discourse on Cromwell's government, and if the English ambassador had complained, the President de Molé, or any other of the great magistrates who then adorned the parliament of Paris, however reluctantly, painfully, and indignantly, might have been compelled to have condemned these illustrious men to the punishment of libellers. I say this only for the sake of bespeaking a favourable attention from your generosity and compassion to what will be feebly urged in behalf of my unfortunate client, who has sacrificed his fortune, his hopes, his connections, his country, to his conscience; who seems marked out for destruction in this his last asylum.

That he still enjoys the security of this asylum, that he has not been sacrificed to the resentment of his powerful enemies, is perhaps owing to the firmness of the king's government. If that be the fact, gentlemen; if his majesty's ministers have resisted applications to expel this unfortunate gentleman from England, I should publicly thank them for their firmness, if it were not unseemly and improper to suppose that they could have acted otherwise—to thank an English government for not violating the most sacred duties of hospitality; for not bringing indelible disgrace on their country.*

But, be that as it may, gentlemen, he now comes before you, perfectly satisfied that an English jury is the most refreshing prospect that the eye of accused innocence ever met in a human tribunal, and he feels with me the most fervent gratitude to the protector of empires, that surrounded as we are with the ruins of principalities and powers, we still continue to meet together after the manner of our fathers, to administer justice in this her ancient sanctuary.

* In an "Address to the Public," annexed by Mr. Peltier to the original report of this trial, he thus expresses himself on the subject mentioned in the text;—"Thanks, above all, to the government of his majesty, who, in the very moment when it was thought that my prosecution was necessary to the experiment they were then making of the practicability of a peace with the republic, have protected me against the fury of the First Consul, who demanded my transportation out of this kingdom; and who have felt that there did not exist a single spot in Europe out of his majesty's dominions, where I could set my foot without falling into the tyger's den."

There is another point of view in which this case seems to me to merit your most serious attention. *I consider it as the first of a long series of conflicts between the greatest power in the world, and the only free press remaining in Europe.* No man living is more thoroughly convinced than I am, that my learned friend, Mr. Attorney General, will never degrade his excellent character, that he will never disgrace his high magistracy by mean compliances, by an immoderate and unconscientious exercise of power; yet I am convinced, by circumstances which I shall now abstain from discussing, that *I am to consider this as the first of a long series of conflicts, between the greatest power in the world, and the only free press now remaining in Europe.* Gentlemen, this distinction of the English press is new—it is a proud and melancholy distinction. Before the great earthquake of the French Revolution had swallowed up all the asylums of free discussion on the continent, we enjoyed that privilege, indeed, more fully than others, but we did not enjoy it exclusively. In great monarchies the press has always been considered as too formidable an engine to be entrusted to unlicensed individuals. But in other continental countries, either by the laws of the state, or by long habits of liberality and toleration in magistrates, a liberty of discussion has been enjoyed, perhaps sufficient for most useful purposes. It existed, in fact, where it was not protected by law; and the wise and generous connivance of governments was daily more and more secured by the growing civilization of their subjects. In Holland, in Switzerland, in the imperial towns of Germany, the press was either legally or practically free. Holland and Switzerland are no more; and, since the commencement of this prosecution, fifty imperial towns have been erased from the list of independent states, by one dash of the pen. Three or four still preserve a precarious and trembling existence. I will not say by what compliances they must purchase its continuance. I will not insult the feebleness of states whose unmerited fall I do most bitterly deplore.

These governments were in many respects one of the most interesting parts of the ancient system of Europe. Unfortunately, for the repose of mankind, great states are compelled, by regard to their own safety, to consider the military spirit and martial habits of their people as one of the main objects of their policy. Frequent hostilities seem almost the necessary condition of their greatness; and, without being great, they cannot long remain safe. Smaller states exempted from this cruel necessity—a hard condition of greatness, a bitter satire on human nature—devoted themselves to the arts of peace, to the cultivation of literature, and the improvement of reason. They became places of refuge for free and fearless discussion; they were the impartial spectators and judges of the various contests of am-

bition, which, from time to time, disturbed the quiet of the world. They thus became peculiarly qualified to be the organs of that public opinion which converted Europe into a great republic, with laws which mitigated, though they could not extinguish, ambition, and with moral tribunals to which even the most despotic sovereigns were amenable. If wars of aggrandizement were undertaken, their authors were arraigned in the face of Europe. If acts of internal tyranny were perpetrated, they resounded from a thousand presses throughout all civilized countries. Princes on whose will there were no legal checks, thus found a moral restraint which the most powerful of them could not brave with absolute impunity. They acted before a vast audience, to whose applause or condemnation they could not be utterly indifferent. The very constitution of human nature, the unalterable laws of the mind of man, against which all rebellion is fruitless, subjected the proudest tyrants to this control. No elevation of power, no depravity, however consummate, no innocence, however spotless, can render man wholly independent of the praise or blame of his fellow men.

These governments were in other respects one of the most beautiful and interesting parts of our ancient system. The perfect security of such inconsiderable and feeble states, their undisturbed tranquillity, amidst the wars and conquests that surrounded them, attested, beyond any other part of the European system, the moderation, the justice, the civilization to which Christian Europe had reached in modern times. Their weakness was protected only by the habitual reverence for justice, which, during a long series of ages, had grown up in Christendom. This was the only fortification which defended them against those mighty monarchs to whom they offered so easy a prey. And, till the French Revolution, this was sufficient. Consider, for instance, the situation of the republic of Geneva: think of her defenceless position in the very jaws of France; but think also of her undisturbed security, of her profound quiet, of the brilliant success with which she applied to industry and literature, while Louis 14th was pouring his myriads into Italy before her gates; call to mind, if ages crowded into years have not effaced them from your memory, that happy period when we scarcely dreamt more of the subjugation of the feeblest republic of Europe, than of the conquest of her mightiest empire, and tell me if you can imagine a spectacle more beautiful to the moral eye, or a more striking proof of progress in the noblest principles of true civilization.

These feeble states, these monuments of the justice of Europe, the asylum of peace, of industry, and of literature, the organs of public reason, the refuge of oppressed innocence and persecuted truth, have perished with those ancient principles which were

their sole guardians and protectors. They have been swallowed up by that fearful convulsion, which has shaken the uttermost corners of the earth. They are destroyed and gone for ever.

One asylum of free discussion is still inviolate. There is still one spot in Europe where man can freely exercise his reason on the most important concerns of society, where he can boldly publish his judgement on the acts of the proudest and most powerful tyrants: The press of England is still free. It is guarded by the free constitution of our forefathers. It is guarded by the hearts and arms of Englishmen, and I trust I may venture to say, that if it be to fall, it will fall only under the ruins of the British empire.

It is an awful consideration, gentlemen. Every other monument of European liberty has perished.—That ancient fabric which has been gradually reared by the wisdom and virtue of our fathers still stands.—It stands, thanks be to God! solid and entire—but it stands alone, and it stands amidst ruins.

In these extraordinary circumstances, I repeat that I must consider this as the first of a long series of conflicts between the greatest power in the world and the only free press remaining in Europe, and I trust that you will consider yourselves as the advanced guard of liberty, as having this day to fight the first battle of free discussion against the most formidable enemy that it ever encountered. You will therefore excuse me, if on so important an occasion I remind you, at more length than is usual, of those general principles of law and policy on this subject, which have been handed down to us by our ancestors.

Those who slowly built up the fabric of our laws, never attempted any thing so absurd as to define by any precise rule the obscure and shifting boundaries which divide libel from history or discussion. It is a subject which from its nature, admits neither rules nor definitions. The same words may be perfectly innocent in one case, and most mischievous and libellous in another. A change of circumstances, often apparently slight, is sufficient to make the whole difference. These changes, which may be as numerous as the variety of human intentions and conditions, can never be foreseen or comprehended under any legal definitions, and the framers of our law have never attempted to subject them to such definitions. They left such ridiculous attempts to those who call themselves philosophers, but who have in fact proved themselves most grossly and stupidly ignorant of that philosophy which is conversant with human affairs.

The principles of the law of England on the subject of political libel are few and simple, and they are necessarily so broad, that, without an habitually mild administration of justice, they might encroach materially on the liberty of political discussion.

Every publication which is intended to vilify either our own government, or the government of any foreign state in amity with this kingdom, is, by the law of England, a libel: To protect political discussion from the danger to which it would be exposed by these wide principles, if they were severely and literally enforced, our ancestors trusted to various securities; some growing out of the law and constitution, and others arising from the character of those public officers whom the constitution had formed, and to whom its administration is committed. They trusted in the first place to the moderation of the legal officers of the crown, educated in the maxims and imbued with the spirit of a free government; controlled by the superintending power of parliament, and peculiarly watched in all political prosecutions by the reasonable and wholesome jealousy of their fellow subjects.—And I am bound to admit, that since the glorious era of the Revolution, making due allowance for the frailties, the faults, and the occasional vices of men, they have upon the whole not been disappointed. I know that in the hands of my learned friend, that trust will never be abused.—But, above all, they confided in the moderation and good sense of juries, popular in their origin, popular in their feelings, popular in their very prejudices, taken from the mass of the people, and immediately returning to that mass again. By these checks and temperaments they hoped that they should sufficiently repress malignant libels, without endangering that freedom of inquiry which is the first security of a free state. They knew that the offence of a political libel is of a very peculiar nature, and differing in the most important particulars from all other crimes. In all other cases the most severe execution of law can only spread terror among the guilty, but in political libels it inspires even the innocent with fear. This striking peculiarity arises from the same circumstances which make it impossible to define the limits of libel and innocent discussion—which make it impossible for a man of the purest and most honourable mind, to be always perfectly certain, whether he be within the territory of fair argument and honest narrative, or whether he may not have unwittingly overstepped the faint and varying line which bounds them.—But, gentlemen, I will go farther.—This is the only offence where severe and frequent punishments not only intimidate the innocent, but deter men from the most meritorious acts, and from rendering the most important services to their country—they indispose and disqualify men for the discharge of the most sacred duties which they owe to mankind. To inform the public on the conduct of those who administer public affairs, requires courage and conscious security. It is always an invidious, and obnoxious office, but it is often the most necessary of all public duties. If it is not done boldly, it cannot be done effectually; and it is

not from writers trembling under the uplifted scourge, that we are to hope for it.

There are other matters, gentlemen, to which I am desirous of particularly calling your attention. These are the circumstances in the condition of this country, which have induced our ancestors, at all times, to handle with more than ordinary tenderness that branch of the liberty of discussion which is applied to the conduct of foreign states. The relation of this kingdom to the commonwealth of Europe, is so peculiar, that no history, I think, furnishes a parallel to it. From the moment in which we abandoned all projects of continental aggrandisement, we could have no interest respecting the state of the continent, but the interests of national safety, and of commercial prosperity. The paramount interest of every state, that which comprehends every other, is security. And the security of Great Britain requires nothing on the continent but the uniform observance of justice. It requires nothing but the inviolability of ancient boundaries, and the sacredness of ancient possessions, which, on these subjects, is but another form of words for justice. A nation which is herself shut out from the possibility of continental aggrandisement, can have no interest but that of preventing such unjust aggrandisement in others. We can have no interest of safety but the preventing of those encroachments, which, by their immediate effects, or by their example, may be dangerous to ourselves. We can have no interest of ambition respecting the continent. So that neither our real, nor even our apparent interests can ever be at variance with justice.

As to commercial prosperity, it is indeed a secondary, but it is still a very important branch of our national interest, and it requires nothing on the continent of Europe, but the *maintenance of peace*, as far as the paramount interest of security will allow.

Whatever ignorant or prejudiced men may affirm, no war was ever gainful to a commercial nation. Losses may be less in some, and incidental profits may arise in others. But no such profits ever formed an adequate compensation for the waste of capital and industry which all wars must produce. Next to peace, our commercial greatness depends chiefly on the affluence and prosperity of our neighbours. A commercial nation has, indeed, the same interest in the wealth of her neighbours, that a tradesman has in the wealth of his customers. The prosperity of England has been chiefly owing to the general progress of civilized nations in the arts and improvements of social life. Not an acre of land has been brought into cultivation in the wilds of Siberia, or on the shores of the Mississippi which has not widened the market for English industry. It is nourished by the progressive prosperity of the world, and it amply repays all that it has received. It can only be employed in spreading civilization

and enjoyment over the earth, and by the unchangeable laws of nature in spite of the impotent tricks of governments, it is now partly applied to revive the industry of those very nations who are the loudest in their senseless clamours against its pretended mischiefs. If the blind and barbarous project of destroying English prosperity could be accomplished, it could have no other effect than that of completely beggaring the very countries who now stupidly ascribe their own poverty to our wealth.

Under these circumstances, gentlemen, it became the obvious policy of this kingdom (a policy in unison with the maxims of a free government), to consider with great indulgence even the boldest animadversions of our political writers on the ambitious projects of foreign states.

Bold, and sometimes indiscreet, as these animadversions might be, they had at least the effect of warning the people of their danger, and of rousing the national indignation against these encroachments, which England has almost always been compelled in the end to resist by arms: seldom, indeed, has she been allowed to wait till a provident regard to her own safety should compel her to take up arms in defence of others. For as it was said by a great orator of antiquity, that no man ever was the enemy of the republic who had not first declared war against him, so I may say, with truth, that no man ever meditated the subjugation of Europe, who did not consider the destruction, or the corruption of England, as the first condition of his success. If you examine history, you will find that no such project was ever formed in which it was not deemed a necessary preliminary, either to detach England from the common cause, or to destroy her. It seems as if all the conspirators against the independence of nations, might have sufficiently taught other states that England is their natural guardian and protector; that she alone has no interest but their preservation; that her safety is interwoven with their own. When vast projects of aggrandisement are manifested, when schemes of criminal ambition are carried into effect, the day of battle is fast approaching for England. Her free government cannot engage in dangerous wars without the hearty and affectionate support of her people. A state thus situated cannot without the utmost peril, silence those public discussions, which are to point the popular indignation against those who must soon be enemies. In domestic dissensions it may sometimes be the supposed interest of government to overawe the press. But it never can be even their apparent interest when the danger is purely foreign. A king of England who, in such circumstances, should conspire against the free press of this country, would undermine the foundations of his own throne; he would silence the trumpet which is to call his people round his standard.

Our ancestors never thought it their policy to avert the resentment of foreign tyrants, by enjoining English writers to contain and repress their just abhorrence of the criminal enterprises of ambition. This great and gallant nation, which has fought in the front of every battle against the oppressors of Europe, has sometimes inspired fear, but thank God she has never felt it. We know that they are our real, and must soon become our declared foes. We know that there can be a cordial amity between the natural enemies and the independence of nations. We have never adopted the cowardly and short-sighted policy of silencing our press—of breaking the spirit and palsying the hearts of our people, for the sake of a hollow and precarious truce. We have never been base enough to purchase a short respite from hostilities by sacrificing the first means of defence; the means of rousing the public spirit of the people, and directing it against the enemies of their country and of Europe.

Gentlemen, the public spirit of a people (by which I mean the whole body of those affections which unite men's hearts to the commonwealth) is in various countries composed of various elements, and depends on a great variety of causes. In this country, I may venture to say, that it mainly depends on the vigour of the popular parts and principles of our government; and that the spirit of liberty is one of its most important elements. Perhaps it may depend less on those advantages of a free government, which are most highly estimated by calm reason, than upon those parts of it which delight the imagination and flatter the just and natural pride of mankind. Among these we are certainly not to forget the political rights which are not uniformly withheld from the lowest classes, and the continual appeal made to them, in public discussion, upon the greatest interests of the state. These are undoubtedly among the circumstances which endear to Englishmen their government and their country, and animate their zeal for that glorious institution which confers on the meanest of them a sort of distinction and nobility unknown to the most illustrious slaves who tremble at the frown of a tyrant. Whoever were unwarily and rashly to abolish or narrow these privileges (which it must be owned are liable to great abuse, and to very specious objections) might perhaps discover, too late, that he had been dismantling his country. Of whatever elements public spirit is composed, it is always and every where the chief defensive principle of a state. It is perfectly distinct from courage. Perhaps no nation, certainly no European nation, ever perished from an inferiority of courage. And undoubtedly no considerable nation was ever subdued, in which the public affections were sound and vigorous. It is public spirit which binds together the dispersed courage of individuals, and fastens it to the commonwealth. It is,

therefore, as I have said, the chief defensive principle of every country. Of all the stimulants which rouse it into action, the most powerful among us is certainly the press; and it cannot be restrained or weakened without imminent danger, that the national spirit may languish, and that the people may act with less zeal and affection for their country in the hour of its danger.

These principles, gentlemen, are not new—they are genuine old English principles. And though in our days they have been disgraced and abused by ruffians and fanatics, they are in themselves as just and sound as they are liberal; and they are the only principles on which a free state can be safely governed.—These principles I have adopted since I first learnt the use of reason, and I think I shall abandon them only with life.

On these principles I am now to call your attention to the libel with which this unfortunate gentleman is charged. I heartily rejoice that I concur with the greatest part of what has been said by my learned friend Mr. Attorney-general, who has done honour even to his character by the generous and liberal principles which he has laid down. He has told you that he does not mean to attack *historical narrative*—he has told you that he does not mean to attack *political discussion*—he has told you also that he does not consider every intemperate word into which a writer fairly engaged in narration or reasoning, might be betrayed, as a fit subject for prosecution. The essence of the crime of libel consists in the malignant mind which the publication proves, and from which it flows. A jury must be convinced before they find a man guilty of libel that his intention was to libel—not to state facts which he believed to be true, or reasonings which he thought just.—My learned friend has told you that the liberty of history includes the right of publishing those observations which occur to intelligent men when they consider the affairs of the world, and I think he will not deny that it includes also the right of expressing those sentiments which all good men feel on the contemplation of extraordinary examples of depravity or excellence.

One more privilege of the historian, which the attorney-general has not named, but to which his principles extend, it is now my duty to claim on behalf of my client—I mean the right of *republishing, historically*, those documents (whatever their original malignity may be), which display the character and unfold the intentions of governments, or factions, or individuals. I think my learned friend will not deny, that an historical compiler may innocently republish in England the most insolent and outrageous declaration of war ever published against his majesty by a foreign government. The intention of the original author was to vilify and degrade his majesty's government; but the intention of the compiler is only to gratify curiosity, or perhaps to

rouse just indignation against the calumniator whose production he republishes. His intention is not libellous—his republication is therefore not a libel. Suppose this to be the case with Mr. Peltier. Suppose him to have republished libels with a merely historical intention. In that case it cannot be pretended that he is more a libeller than my learned friend Mr. Abbott, who read these supposed libels to you when he opened the pleadings. Mr. Abbott republished them to you, that you might know and judge of them—Mr. Peltier, on the supposition I have made, also republished them that the public might know and judge of them.

You already know that the general plan of Mr. Peltier's publication was, to give a picture of the cabals and intrigues, of the hopes and projects, of French factions. It is undoubtedly a natural and necessary part of this plan to republish all the serious and ludicrous pieces which these factions circulate against each other. The Ode ascribed to Chenier or Ginguene I do really believe to have been written at Paris, to have been circulated there, to have been there attributed to some one of these writers, to have been sent to England as their work, and as such, to have been republished by Mr. Peltier. But I am not sure that I have evidence to convince you of the truth of this—Suppose that I have not; will my learned friend say that my client must necessarily be convicted? I, on the contrary, contend, that it is for my learned friend to show that it is not an historical republication—Such it professes to be, and that profession it is for him to disprove—The profession may indeed be “a mask,” but it is for my friend to pluck off the mask, and expose the libeller, before he calls upon you for a verdict of guilty.

If the general lawfulness of such republications be denied, then I must ask Mr. Attorney General to account for the long impunity which English newspapers have enjoyed. I must request him to tell you why they have been suffered to republish all the atrocious, official and unofficial libels which have been published against his majesty for the last ten years, by the Brissots, the Marats, the Dantons, the Robespierres, the Barrères, the Talliens, the Reubells, the Merlins, the Barrases, and all that long line of bloody tyrants who oppressed their own country, and insulted every other which they had not the power to rob. What must be the answer? That the English publishers were either innocent if their motive was to gratify curiosity, or praiseworthy if their intention was to rouse indignation against the calumniators of their country. If any other answer be made, I must remind my friend of a most sacred part of his duty—the duty of protecting the honest fame of those who are absent in the service of their country. Within these few days, we have seen in every newspaper in England, a publication called the Report of

Colonel Sebastian, in which a gallant British officer (general Stuart) is charged with writing letters to procure assassination. The publishers of that infamous report are not and will not be prosecuted, because their intention is not to libel general Stuart. On any other principle why have all our newspapers been suffered to circulate that most atrocious of all libels against the king and people of England, which purports to be translated from the *Moniteur* of the 9th of August, 1804; a libel against a Prince, who has passed through a factious and stormy reign of forty-three years without a single imputation on his personal character—against a people who have passed through the severest trials of national virtue with unimpaired glory, who alone in the world can boast of mutinies without murder, of triumphant mobs without massacre, of bloodless revolutions and of civil wars unstained by a single assassination—that most impudent and malignant libel, which charges such a king of such a people not only with having hired assassins, but with being so shameless, so lost to all sense of character, as to have bestowed on these assassins, if their murderous projects had succeeded, the highest badges of public honour, the rewards reserved for statesmen and heroes—the order of the garter;—the order which was founded by the heroes of Cressy and Poitiers—the garter which was worn by Henry the Great and by Gustavus Adolphus, which might now be worn by the hero, who, on the shores of Syria, the ancient theatre of English chivalry, has revived the renown of English valour and of English humanity—that unsullied garter, which a detestable libeller dares to say is to be paid as the price of murder.

If I had now to defend an English publisher for the republication of that abominable libel, what must I have said in his defence? I must have told you that it was originally published by the French government in their Official Gazette, that it was republished by the English editor to gratify the natural curiosity, perhaps to rouse the just resentment of his English readers. I should have contended, and I trust, with success, that his republication of a libel was not libellous, that it was lawful, that it was laudable. All that would be important, at least all that would be essential in such a defence I now state to you on behalf of Mr. Peltier; and if an English newspaper may safely republish the libels of the French government against his majesty, I shall leave you to judge whether Mr. Peltier, in similar circumstances, may not with equal safety, republish the libels of Chenier against the First Consul. On the one hand you have the assurances of Mr. Peltier in the context that this ode is merely a republication—you have also the general plan of his work with which such a republication is perfectly consistent. On the other hand, you have only the suspicions of Mr.

Attorney General that this ode is an original production of the defendant.

But supposing that you should think it his production, and that you should also think it a libel—even in that event, which I cannot anticipate, I am not left without a defence. The question will still be open—"Is it a libel on Buonaparté, or is it a libel on Chenier or Ginguene?" This is not an information for a libel on Chenier; and if you should think that this ode was produced by Mr. Peltier, and ascribed by him to Chenier for the sake of covering that writer with the odium of Jacobinism, the defendant is entitled to your verdict of not guilty. Or if you should believe that it is ascribed to Jacobinical writers for the sake of satirizing a French Jacobinical faction, you must also in that case acquit him. Butler puts seditious and immoral language into the mouths of rebels and fanatics, but Hudibras is not for that reason a libel on morality or government. Swift, in the most exquisite piece of irony in the world (his Argument against the abolition of Christianity), uses the language of those shallow, atheistical coxcombs whom his satire was intended to scourge. The scheme of his irony required some levity, and even some profaneness of language. But nobody was ever so dull as to doubt whether Swift meant to satirize atheism or religion. In the same manner Mr. Peltier, when he wrote a satire on French Jacobinism, was compelled to ascribe to Jacobins a Jacobinical hatred of government. He was obliged, by dramatic propriety, to put into their mouths those anarchical maxims which are complained of in this ode. But it will be said, these incitements to insurrection are here directed against the authority of Buonaparté. This proves nothing, because they must have been so directed, if the ode were a satire on Jacobinism. French Jacobins must inveigh against Buonaparté, because he exercises the powers of government. The satirist who attacks them must transcribe their sentiments, and adopt their language.

I do not mean to say, gentlemen, that Mr. Peltier feels any affection, or professes any allegiance to Buonaparté. If I were to say so, he would disown me. He would disdain to purchase an acquittal by the profession of sentiments which he disclaims and abhors. Not to love Buonaparté is no crime.—The question is not whether Mr. Peltier loves or hates the First Consul, but whether he has put revolutionary language into the mouth of Jacobins, with a view to paint their incorrigible turbulence, and to exhibit the fruits of Jacobinical revolutions to the detestation of mankind.

Now, gentlemen, we cannot give a probable answer to this question without previously examining two or three questions on which the answer to the first must very much depend. Is there a faction in France which breathes the spirit, and is likely to employ the

language of this ode? Does it perfectly accord with their character and views? Is it utterly irreconcilable with the feelings, opinions, and wishes of Mr. Peltier? If these questions can be answered in the affirmative, then I think you must agree with me, that Mr. Peltier does not in this ode speak his own sentiments, that he does not here vent his own resentment against Buonaparté, but that he personates a Jacobin, and adopts his language for the sake of satirizing his principles.

These questions, gentlemen, lead me to those political discussions, which, generally speaking, are in a court of justice odious and disgusting. Here, however, they are necessary, and I shall consider them only as far as the necessities of this cause require.

Gentlemen, the French Revolution—I must pause, after I have uttered words which present such an overwhelming idea.—But I have not now to engage in an enterprise so far beyond my force as that of examining and judging that tremendous revolution—I have only to consider the character of the factions which it must have left behind it.—The French Revolution began with great and fatal errors. These errors produced atrocious crimes. A mild and feeble monarchy was succeeded by bloody anarchy, which very shortly gave birth to military despotism. France, in a few years, described the whole circle of human society.

All this was in the order of nature—when every principle of authority and civil discipline, when every principle which enables some men to command and disposes others to obey was extirpated from the mind by atrocious theories, and still more atrocious examples; when every old institution was trampled down with contumely, and every new institution covered in its cradle with blood; when the principle of property itself, the sheet-anchor of society, was annihilated; when in the persons of the new possessors, whom the poverty of language obliges us to call proprietors, it was contaminated in its source by robbery and murder, and it became separated from that education and those manners, from that general presumption of superior knowledge and more scrupulous probity which form its only liberal titles to respect; when the people were taught to despise every thing old, and compelled to detest every thing new; there remained only one principle strong enough to hold society together, a principle utterly incompatible, indeed, with liberty, and unfriendly to civilization itself, a tyrannical and barbarous principle, but, in that miserable condition of human affairs, a refuge from still more intolerable evils—I mean the principle of military power which gains strength from that confusion and bloodshed in which all the other elements of society are dissolved, and which, in these terrible extremities, is the cement that preserves it from total destruction.

Under such circumstances, Buonaparté usurped the supreme power in France—I say *usurped*, because an illegal assumption of power is an usurpation. But usurpation, in its strongest moral sense, is scarcely applicable to a period of lawless and savage anarchy. The guilt of military usurpation, in truth, belongs to the authors of those confusions which sooner or later give birth to such an usurpation.

Thus, to use the words of the historian, “by recent as well as all ancient example, it became evident, that illegal violence, with whatever pretences it may be covered, and whatever object it may pursue, must inevitably end at last in the arbitrary and despotic government of a single person.”* But though the government of Buonaparté has silenced the revolutionary factions, it has not and it cannot have extinguished them. No human power could reimpress upon the minds of men all those sentiments and opinions which the sophistry and anarchy of fourteen years had obliterated. A faction must exist, which breathes the spirit of the ode now before you. It is, I know, not the spirit of the quiet and submissive majority of the French people. They have always rather suffered, than acted in, the revolution. Completely exhausted by the calamities through which they have passed, they yield to any power which gives them repose. There is, indeed, a degree of oppression which rouses men to resistance, but there is another and a greater which wholly subdues and unmans them. It is remarkable that Robespierre himself was safe, till he attacked his own accomplices. The spirit of men of virtue was broken, and there was no vigour of character left to destroy him, but in those daring ruffians who were the sharers of his tyranny.

As for the wretched populace who were made the blind and senseless instrument of so many crimes, whose frenzy can now be reviewed by a good mind with scarce any moral sentiment but that of compassion—that miserable multitude of beings, scarcely human, have already fallen into a brutish forgetfulness of the very atrocities which they themselves perpetrated. They have already forgotten all the acts of their drunken fury. If you ask one of them, who destroyed that magnificent monument of religion and art? or who perpetrated that massacre? They stupidly answer, the Jacobins! Though he who gives the answer was probably one of these Jacobins himself; so that a traveller, ignorant of French history, might suppose the Jacobins to be the name of some Tartar horde, who, after laying waste France for ten years, were at last expelled by the native inhabitants. They have passed from senseless rage to stupid quiet. Their delirium is followed by lethargy.

In a word, gentlemen, the great body of the people of France have been severely trained in those convulsions and proscriptions which are the school of slavery. They are capable of no mutinous, and even of no bold and manly political sentiments. And if this Ode professed to paint their opinions, it would be a most unfaithful picture. But it is otherwise with those who have been the actors and leaders in the scene of blood. It is otherwise with the numerous agents of the most indefatigable, searching, multifarious and omnipresent tyranny that ever existed, which pervaded every class of society, which had ministers and victims in every village in France.

Some of them, indeed—the basest of the race—the Sophists, the Rhetors, the Poet-laureats of murder—who were cruel only from cowardice and calculating selfishness, are perfectly willing to transfer their venal pens to any government that does not disdain their infamous support. These men, republicans from servility, who published rhetorical panegyrics on massacre, and who reduced plunder to a system of ethics, are as ready to preach slavery as anarchy. But the more daring—I had almost said the more respectable ruffians cannot so easily bend their heads under the yoke. These fierce spirits have not lost “*the unconquerable will, the study of revenge, immortal hate*.”—They leave the luxuries of servitude to the mean and dastardly hypocrites, to the Belials and Mammons of the infernal faction. They pursue their old end of tyranny under their old pretext of liberty. The recollection of their unbounded power renders every inferior condition irksome and vapid, and their former atrocities form, if I may so speak, a sort of moral destiny which irresistibly impels them to the perpetration of new crimes. They have no place left for penitence on earth; they labour under the most awful proscription of opinion that ever was pronounced against human beings. They have cut down every bridge by which they could retreat into the society of men.—Awakened from their dreams of democracy—the noise subsided that deafened their ears to the voice of humanity,—the film fallen from their eyes which hid from them the blackness of their own deeds,—haunted by the memory of their inexorable guilt, condemned daily to look on the faces of those whom their hand made widows and orphans, they are goaded and scourged by these real furies, and hurried into the tumult of new crimes, which will drown the cries of remorse; or if they be too depraved for remorse, will silence the curses of mankind. Tyrannical power is their only refuge from the just vengeance of their fellow creatures; murder is their only means of usurping power. They have no taste, no occupation, no pursuit, but power and blood. If their hands are tied, they must at least have the luxury of murderous projects. They have

* Hume's Hist. of England, vol. 7, p. 220.

drank too deeply of human blood ever to relinquish their cannibal appetite.

Such a faction exists in France. It is numerous; it is powerful; and it has a principle of fidelity stronger than any that ever held together a society. They are banded together by despair of forgiveness, by the unanimous detestation of mankind. They are now contained by a severe and stern government; but they still meditate the renewal of insurrection and massacre, and they are prepared to renew the worst and most atrocious of their crimes, that crime against posterity and against human nature itself, that crime of which the latest generations of mankind may feel the fatal consequences—the crime of degrading and prostituting the sacred name of liberty.

I must own that however paradoxical it may appear, I should almost think not worse, but more meanly of them if it were otherwise. I must then think them destitute of that which I will not call courage, because that is the name of a virtue—but of that ferocious energy which alone rescues ruffians from contempt. If they were destitute of that which is the heroism of murderers, they would be the lowest as well as the most abominable of beings.

It is impossible to conceive any thing more despicable than wretches who, after hectoring and bullying over their meek and blameless sovereign, and his defenceless family, whom they kept so long in a dungeon trembling for their existence—whom they put to death by a slow torture of three years—after playing the republicans and the tyrannicides to women and children—become the supple and fawning slaves of the first government that knows how to wield the scourge with a firm hand.

I have used the word republican because it is the name by which this atrocious faction describes itself. The assumption of that name is one of their crimes. They are no more republicans than royalists; they are the common enemies of all human society. God forbid, that by the use of that word, I should be supposed to reflect on the members of those respectable republican communities which did exist in Europe before the French revolution. That revolution has spared many monarchies, but it has spared no republic within the sphere of its destructive energy. One republic only now exists in the world—a republic of English blood, which was originally composed of republican societies, under the protection of a monarchy, which had therefore no great and perilous change in their internal constitution to effect, and of which (I speak it with pleasure and pride), the inhabitants, even in the convulsions of a most deplorable separation, displayed the humanity as well as valour, which, I trust, I may say they inherited from their forefathers.

Nor do I mean by the use of the word “republican,” to confound this execrable fac-

tion with all those who, in the liberty of private speculation, may prefer a republican form of government. I own, that after much reflexion, I am not able to conceive an error more gross than that of those who believe in the possibility of erecting a republic in any of the old monarchical countries of Europe, who believe that in such countries an elective supreme magistracy can produce any thing but a succession of stern tyrannies and bloody civil wars. It is a supposition which is belied by all experience, and which betrays the greatest ignorance of the first principles of the constitution of society. It is an error which has a false appearance of superiority over vulgar prejudice; it is therefore too apt to be attended with the most criminal rashness and presumption, and too easy to be inflamed into the most immoral and anti-social fanaticism. But as long as it remains a mere quiescent error, it is not the proper subject of moral disapprobation.

If then, gentlemen, such a faction, falsely calling itself republican, exists in France, let us consider whether this ode speaks their sentiments, describes their character, agrees with their views. Trying it by the principle I have stated, I think you will have no difficulty in concluding, that it is agreeable to the general plan of this publication, to give an historical and satirical view of the Brutuses and brutes of the republic—of those who assumed and disgraced the name of Brutus,* and who, under that name, sat as judges in their mock tribunals with pistols in their girdles, to anticipate the office of the executioner on those unfortunate men whom they treated as rebels, for resistance to Robespierre and Couthon.

I now come to show you, that this ode cannot represent the opinions of Mr. Peltier.—He is a French royalist.—He has devoted his talents to the cause of his king—For that cause he has sacrificed his fortune and hazarded his life.† For that cause he is proscribed and exiled from his country. I could easily conceive powerful topics of royalist invective against Buonaparté—And if Mr. Pel-

* “Citizen Brutus, President of the Military Commission at Marseilles, in January, 1794.” *Orig. Ed.*

† In a note to the Address to the Public subjoined to the original report of his trial, Mr. Peltier says:

“I may be permitted to repeat in this place, that the news of my trial brought my aged father and beloved sister at Nantes to the grave, within a few days of each other; the only remains of my family. The agent of the Consul immediately laid hands on my patrimony. Thus I may say with truth, that I was tried in England, and punished in France.

“*Me meo domo expulisti, patrem meum occidisti, patrimonium possidestis. Quid vultis amplius?*” Cic. pro Roscio Amerino.

tier had called upon Frenchmen by the memory of St. Louis and Henry the Great, by the memory of that illustrious family which reigned over them for seven centuries, and with whom all their martial renown and literary glory are so closely connected; if he had adjured them by the spotless name of that Louis 16th, the martyr of his love for his people, which scarce a man in France can now pronounce but in the tone of pity and veneration;—if he had *thus* called upon them to change their useless regret and their barren pity into generous and active indignation; if he had reproached the conquerors of Europe with the disgrace of being the slaves of an upstart stranger; if he had brought before their minds the contrast between their country under her ancient monarchs, the source and model of refinement in manners and taste, and since their expulsion the scourge and the opprobrium of humanity; if he had exhorted them to drive out their ignoble tyrants, and to restore their native sovereign; I should then have recognized the voice of a royalist—I should have recognized language that must have flowed from the heart of Mr. Peltier, and I should have been compelled to acknowledge that it was pointed against Buonaparté.

These, or such as these, must have been the topics of a royalist, if he had published an invective against the First Consul. But instead of these, or similar topics, what have we in this ode? On the supposition that it is the invective of a royalist, how is it to be reconciled to common sense? What purpose is it to serve? To whom is it addressed? To what interests does it appeal? What passions is it to rouse? If it be addressed to royalists, then I request, gentlemen, that you will carefully read it, and tell me whether, on that supposition, it can be any thing but the ravings of insanity, and whether a commission of lunacy be not a proceeding more fitted to the author's case, than a conviction for a libel. On that supposition, I ask you whether it does not amount, in substance, to such an address as the following: "Frenchmen! Royalists! I do not call upon you to avenge the murder of your innocent sovereign, the butchery of your relations and friends, the disgrace and oppression of your country? I call upon you by the hereditary right of Barras, transmitted through a long series of ages, by the beneficent government of Merlin and Reubell, those worthy successors of Charlemagne, whose authority was as mild as it was lawful—I call upon you to revenge on Buonaparté the deposition of that Directory who condemned the far greater part of yourselves to beggary and exile, who covered France with bastiles and scaffolds; who doomed the most respectable remaining members of their community, the Pichegrus, the Barbe Marbois, the Barthelemis, to a lingering death in the pestilential wilds of Guiana.—I call upon you to avenge on Buonaparté the cause of those councils of

"Five Hundred, or of Two Hundred, of Elders or of Youngsters, those disgusting and nauseous mockeries of representative assemblies; those miserable councils which sycophant sophists had converted into machines for fabricating decrees of proscription and confiscation, which not only proscribed unborn thousands, but, by a refinement and innovation in rapine, visited the sins of the children upon the fathers, and beggared parents not for the offences but for the misfortunes of their sons. I call upon you to restore this directory and these councils, and all this horrible profanation of the name of a republic, and to punish those who delivered you from them. I exhort you to reverence the den of these banditti as 'the sanctuary of the laws,' and to lament the day in which this intolerable nuisance was abated as 'an unfortunate day.' Last of all, I exhort you once more to follow that deplorable chimera—the first, lump that led you to destruction—the sovereignty of the people—though I know, and you have bitterly felt, that you never were so much slaves, in fact, as since you have been so vereigns in theory!"

Let me ask Mr. Attorney General, whether, upon his supposition, I have not given you a faithful translation of this ode; and I think I may safely repeat, that, if this be the language of a royalist addressed to royalists, it must be the production of a lunatic. But on my supposition, every thing is natural and consistent. You have the sentiments and language of a Jacobin—it is therefore probable, if you take it as an historical republication of a Jacobin piece—it is just, if you take it as a satirical representation of Jacobin opinions and projects.

Perhaps it will be said, that this is the production of a royalist writer, who assumes a republican disguise to serve royalist purposes; but if my learned friend chooses that supposition, I think an equal absurdity returns upon him in another shape. We must then suppose it to be intended to excite republican discontent and insurrection against Buonaparté. It must then be taken as addressed to republicans.—Would Mr. Peltier, in that case, have disclosed his name as the publisher?—Would he not much rather have circulated the ode in the name of Chenier, without prefixing his own, which was more than sufficient to warn his Jacobinical readers against all his counsels and exhortations. If he had circulated it under the name of Chenier only, he would indeed have hung out republican colours; but by prefixing his own, he appears without disguise. You must suppose him then to say, "Republicans! I, your mortal enemy for fourteen years, whom you have robbed of his all, whom you have forbidden to revisit his country under pain of death, who, from the beginning of the revolution, unceasingly poured ridicule upon your follies, and exposed your crimes to detestation; who

"in the cause of my unhappy sovereign braved
 "your daggers for three years, and who escap-
 "ed, almost by miracle, from your assassins
 "in September, who has since been constantly
 "employed in warning other nations by your
 "example, and in collecting the evidence
 "upon which history will pronounce your
 "condemnation; I who at this moment deli-
 "berately choose exile and honorable poverty,
 "rather than give the slightest mark of ex-
 "ternal compliance with your abominable in-
 "stitutions; I your most irreconcilable and
 "indefatigable enemy, offer you counsel which
 "you know can only be a snare into which I
 "expect you to fall, though by the mere pub-
 "lication of my name I have sufficiently fore-
 "warned you that I can have no aim but that
 "of your destruction."

I ask you again, gentlemen, is this com-
 mon sense? Is it not as clear, from the name
 of the author, that it is not addressed to jaco-
 bins, as, from the contents of the publication,
 that it is not addressed to royalists? It may
 be the genuine work of Chenier, for the topics
 are such as he would employ—it may be a
 satire on jacobinism, for the language is well
 adapted to such a composition—but it can-
 not be a royalist's invective against Buona-
 parte, intended by him to stir up either royal-
 ists or republicans to the destruction of the
 First Consul.

I cannot conceive it to be necessary that I
 should minutely examine this poem to con-
 firm my construction. There are one or two
 passages on which I shall make a few obser-
 vations. The first is the contrast between the
 state of England and that of France, of which
 an ingenious friend has favoured me with a
 translation, which I shall take the liberty of
 reading to you.

Her glorious fabric England rears
 On law's fix'd base alone;
 Law's guardian pow'r while each reveres,
 England! thy people's freedom fears
 No danger from the throne.

For there, before all-mighty law,
 High birth, high place, with pious awe,
 In reverend homage bend:
 There man's free spirit, unconstrain'd
 Exults, in man's best rights maintain'd,
 Rights, which by ancient valour gain'd,
 From age to age descend.

Britons, by no base fear dismay'd,
 May power's worst acts arraign.
 Does tyrant force their rights invade?
 They call on law's impartial aid,
 Nor call that aid in vain.

Hence, of her sacred charter proud,
 With ev'ry earthly good endow'd,
 O'er subject seas unsur'd,
 Britannia waves her standard wide,
 Hence, sees her freighted navies ride
 Up wealthy Thames' majestic tide,
 The wonder of the world.

Here at first sight, you may perhaps think
 that the consistency of the Jacobin character
 is not supported, that the republican disguise
 is thrown off, that the royalist stands un-
 masked before you—but, on more considera-
 tion, you will find that such an inference
 would be too hasty. The leaders of the re-
 volution are now reduced to envy that British
 constitution which, in the infatuation of their
 presumptuous ignorance, they once rejected
 with scorn. They are now slaves (as they
 themselves confess) because twelve years ago
 they did not believe Englishmen to be free.
 They cannot but see that England is the only
 popular government in Europe; and they are
 compelled to pay a reluctant homage to the
 justice of English principles. The praise of
 England is too striking a satire on their own
 government to escape them; and I may ac-
 cordingly venture to appeal to all those who
 know any thing of the political circles of Paris,
 whether such contrasts between France and
 England as that which I have read to you be
 not the most favourite topics of the opponents
 of Buonaparté.—But in the very next stanza,

Cependant, encore affligée
 Par l'odieuse hérédité,
 Londres de titres surchargée,
 Londres n'a pas l'ÉGALITÉ.

You see that though they are forced to render
 an unwilling tribute to our liberty, they cannot
 yet renounce all their fantastic and deplorable
 chimeras. They endeavour to make a com-
 promise between the experience on which they
 cannot shut their eyes, and the wretched sys-
 tems to which they still cling. Fanaticism is
 the most incurable of all mental diseases: be-
 cause in all its forms, religious, philosophical,
 or political, it is distinguished by a sort of mad
 contempt for *experience*, which alone can cor-
 rect the errors of practical judgment. And
 these democratical fanatics still speak of the
 odious principle of "hereditary government."
 They still complain that we have not
 "*equality*." They know not that this odious
 principle of inheritance is our bulwark against
 tyranny; that if we had their pretended
 equality we should soon cease to be the ob-
 jects of their envy. These are the sentiments
 which you would naturally expect from half-
 cured lunatics; but once more I ask you,
 whether they can be the sentiments of Mr.
 Peltier? Would he complain that we have
 too much monarchy, or too much of what
 they call aristocracy? If he has any preju-
 dices against the English government, must
 they not be of an entirely opposite kind?

I have only one observation more to make
 on this poem. It relates to the passage which
 is supposed to be an incitement to assassina-
 tion. In my way of considering the subject,
 Mr. Peltier is not answerable for that passage,
 whatever its demerits may be. It is put into
 the mouth of a Jacobin; and it will not, I
 think, be affirmed, that if it were an incite-
 ment to assassinate, it would be very unsuit-

able to his character. Experience, and very recent experience, has abundantly proved how widely the French revolution has blackened men's imaginations, what a daring and desperate cast it has given to their characters, how much it has made them regard the most extravagant projects of guilt as easy and ordinary expedients: and to what a horrible extent it has familiarized their minds to crimes which before were only known among civilized nations by the history of barbarous times, or as the subject of poetical fiction. But thank God, gentlemen, we in England have not learned to charge any man with inciting assassination—not even a member of that atrocious sect who have revived political assassination in Christendom—except when we are compelled to do so by irresistible evidence. Where is that evidence here? In general it is immoral because it is indecent to speak with levity, still more to anticipate with pleasure, the destruction of any human being. But between this immorality and the horrible crime of inciting to assassination, there is a wide interval indeed. The real or supposed author of this Ode gives you to understand that he would hear with no great sorrow of the destruction of the First Consul. But surely the publication of that sentiment is very different from an exhortation to assassinate.

But, says my learned friend, why is the example of Brutus celebrated? Why are the French reproached with their baseness in not copying that example? Gentlemen, I have no judgment to give on the act of Marcus Brutus—I rejoice that I have not—I should not dare to condemn the acts of brave and virtuous men in extraordinary and terrible circumstances, and which have been, as it were, consecrated by the veneration of so many ages—Still less should I dare to weaken the authority of the most sacred rules of duty, by praises which would be immoral even if the acts themselves were in some measure justified by the awful circumstances under which they were done. I am not the panegyrist of “those instances of doubtful public spirit at which morality is perplexed, reason is staggered, and from which affrighted nature recoils.”

But whatever we may think of the act of Brutus, surely my learned friend will not contend that every allusion to it, every panegyric on it, which has appeared for eighteen centuries, in prose and verse, is an incitement to assassination. From the *conspicue divins Philippica fame*, down to the last schoolboy declamation, he will find scarce a work of literature without such allusions, and not very many without such panegyrics.—I must say that he has construed this ode more like an attorney-general than a critic in poetry. According to his construction, almost every fine writer in our language is a preacher of murder.

Having said so much on the first of these

supposed libels, I shall be very short on the two that remain—the verses ascribed to a Dutch patriot, and the parody of the speech of Lepidus. In the first of these, the piercing eye of Mr. Attorney General has again discovered an incitement to assassinate—the most learned incitement to assassinate that ever was addressed to such ignorant ruffians as are most likely to be employed for such nefarious purposes!—An obscure allusion to an obscure and perhaps fabulous part of Roman history, to the supposed murder of Romulus, about which none of us know any thing, and of which the Jacobins of Paris and Amsterdams probably never heard.—But the *Apotheosis*:—Here my learned friend has a little forgotten himself—he seems to argue as if *Apotheosis* always pre-supposed death. But he must know, that Augustus and even Tiberius and Nero were deified during their lives, and he cannot have forgotten the terms in which one of the court poets of Augustus speaks of his master's divinity—

—Præsens divus habebitur
Augustus adjectis Britannis
Imperio.—

If any modern rival of Augustus should choose that path to Olympus, I think he will find it more steep and rugged than that by which Pollux and Hercules climbed to the ethereal towers, and that he must be content with purpling his lips with burgundy on earth, as he has very little chance of purpling them with nectar among the gods.

The utmost that can seriously be made of this passage is, that it is a wish for a man's death. I repeat that I do not contend for the decency of publicly declaring such wishes, or even for the propriety of entertaining them: but the distance between such a wish and a persuasive to murder, is immense. Such a wish for a man's death is very often little more than a strong, though I admit not a very decent, way of expressing detestation for his character.

But without pursuing this argument any farther, I think myself intitled to apply to these verses the same reasoning which I have already applied to the first supposed libel on Buonaparté. If they be the real composition of a pretended Dutch patriot, Mr. Peltier may republish them innocently—if they be a satire on such pretended Dutch patriots, they are not a libel on Buonaparté.—Granting, for the sake of argument, that they did contain a serious exhortation to assassinate, is there any thing in such an exhortation inconsistent with the character of these pretended patriots?

They who were disaffected to the mild and tolerant government of their flourishing country because it did not exactly square with all their theoretical whimsies; they who revolted from that administration as tyrannical, which made Holland one of the wonders of the world for protected industry, for liberty of action and opinion, and for a pros-

perity which I may venture to call the greatest victory of man over hostile elements; they who called in the aid of the fiercest tyrants that Europe ever saw, who served in the armies of Robespierre, under the impudent pretext of giving liberty to their country, and who have, finally, buried in the same grave its liberty, its independence, and perhaps its national existence; they are not men entitled to much tenderness from a political satirist, and he will scarcely violate dramatic propriety if he impute to them any language, however criminal and detestable. They who could not brook the authority of their old, lazy, good-natured government, are not likely to endure with patience the yoke of that stern domination which they have brought upon themselves, and which, as far as relates to them, is only the just punishment of their crimes. They who call in tyrants to establish liberty, who sacrifice the independence of their country under pretence of reforming its internal constitution, are capable of every thing.

I know nothing more odious than their character, unless it be that of those who invoked the aid of the oppressors of Switzerland to be the deliverers of Ireland! Their guilt has, indeed, peculiar aggravations. In the name of liberty they were willing to surrender their country into the hands of tyrants, the most lawless, faithless, and merciless that ever scourged Europe; who, at the very moment of their negotiation, were covered with the blood of the unhappy Swiss, the martyrs of real independence and of real liberty. Their success would have been the destruction of the only free community remaining in Europe—of England, the only bulwark of the remains of European independence. Their means were, the passions of an ignorant and barbarous peasantry, and a civil war, which could not fail to produce all the horrible crimes and horrible retaliations of the last calamity that can befall society—a servile revolt. They sought the worst of ends by the most abominable of means. They laboured for the subjugation of the world at the expense of crimes and miseries which men of humanity and conscience would have thought too great a price for the deliverance of mankind.

The last of these supposed libels, is the parody on the speech of Lepidus, in the *Fragments of Sallust*. It is certainly a very ingenious and happy parody of an original, attended with some historical obscurity and difficulty, which it is no part of our present business to examine. This parody is said to have been clandestinely placed among the papers of one of the most amiable and respectable men in France, M. Camille Jordan, in order to furnish a pretext for involving that excellent person in a charge of conspiracy. This is said to have been done by a spy of Fouché. Now, gentlemen, I take this to be a satire on Fouché, on his manufacture of plots—on his contrivances for the destruction of innocent and virtuous men—and I should admit it to

be a libel on Fouché if it were possible to libel him. I own that I should like to see Fouché appear as a plaintiff, seeking reparation for his injured character, before any tribunal safe from his fangs, where he had not the power of sending the judges to Guiana or Madagascar. It happens that we know something of the history of Mr. Fouché, from a very credible witness against him—from himself. You will perhaps excuse me for reading to you some passages of his letters in the year 1793, from which you will judge, whether any satire can be so severe as the portrait he draws of himself:

* “Convinced that there are no innocent “men in this infamous city” (the unhappy

* “Citoyens collègues, nous poursuivons notre mission avec l'énergie de républicains qui ont le sentiment profond de leur caractère; nous ne le déposerons point, nous ne descendrons pas de la hauteur où le peuple nous a placés pour nous occuper des misérables intérêts de quelques hommes plus ou moins coupables envers la patrie. Nous avons éloigné de nous tous les individus, parce que nous n'avons point de temps à perdre, point de faveurs à accorder; nous ne devons voir et nous ne voyons que la république, que vos décrets qui nous commandent de donner un grand exemple, une leçon éclatante; nous n'écoutons que le cri du peuple qui veut que tout le sang des patriotes soit vengé une fois d'une manière prompte et terrible, pour que l'humanité n'ait plus à pleurer de le voir couler de nouveau.

“Convaincus qu'il n'y a d'innocent dans cette infâme cité que celui qui fut opprimé ou chargé de fers par les assassins du peuple, nous sommes en défiance contre les larmes du repentir; rien ne peut désarmer notre sévérité. Ils l'ont bien senti ceux qui cherchent à vous surprendre, ceux qui viennent de vous arracher un décret de surais en faveur d'un détenu: nous sommes sur les lieux, vous nous avez investis de votre confiance, et nous n'avons pas été consultés.

“Nous devons vous le dire, citoyens collègues, l'indulgence est une faiblesse dangereuse propre à rallumer les espérances criminelles au moment où il faut les détruire: on l'a provoquée envers un individu, on l'a provoquée envers tout ceux de son espèce, afin de rendre illusoire l'effet de votre justice; on n'ose pas encore vous demander le rapport de votre premier décret sur l'anéantissement de la ville de Lyon; mais on n'a presque rien fait jusqu'ici pour l'exécuter. Les démolitions sont trop lentes, il faut des moyens plus rapides à l'impatience républicaine. L'explosion de la mine et l'activité dévorante de la flamme peuvent seules exprimer la toute-puissance du peuple; sa volonté ne peut être arrêtée comme celle des tyrans, elle doit avoir les effets du tonnerre.

(Signés) “COLLOT D'HERBOIS ET FOUCHÉ.”

Moniteur, 24th Nov., 1793.

city of Lyons), "but those who are oppressed and loaded with iron by the assassins of the people," (he means the murderers who were condemned to death for their crimes) "we are on our guard against the tears of repentance! nothing can disarm our severity. — They have not yet dared to solicit the repeal of your first decree for the ANNihilation of the city of Lyons! but scarcely any thing has yet been done to carry it into execution." (Pathetic!) "The demolitions are too slow. More rapid means are necessary to republican impatience. The explosion of the mine, and the devouring activity of the flames, can alone adequately represent the omnipotence of the people." (Unhappy populace, always the pretext, the instrument and the victim of political crimes!) "Their will cannot be checked like that of tyrants — It ought to have the effects of thunder!" The next specimen of this worthy gentleman which I shall give, is in a speech to the Jacobin Club of Paris, on the 21st of December, 1793, by his worthy colleague in the mission to Lyons, Collot d'Herbois:

* "We are accused" (you, gentlemen, will

* "On nous a accusés d'être des anthropophages, des hommes de sang; et ce sont des pétitions contre-révolutionnaires, colportées par des aristocrates, qui nous font ce reproche! On examine avec l'attention la plus scrupuleuse de quelle manière sont morts les contre-révolutionnaires; on affecte de répandre qu'ils ne sont pas morts du premier coup. . . . Eh! Jacobins, Chalier est-il mort du premier coup? Si les aristocrates avoient triomphé, croyez-vous que les Jacobins eussent péri du premier coup? Et la Convention, qui avoit été mise hors de la loi par ces scélérats, auroit-elle péri du premier coup? Qui sont donc ces hommes qui réservent toute leur sensibilité pour des contre-révolutionnaires, qui évoquent douloureusement les mânes des assassins de nos frères? Qui sont ceux qui ont des larmes de reste pour pleurer sur les cadavres des ennemis de la liberté, alors que le cœur de la patrie est déchiré? Une goutte de sang versée des veines généreuses d'un patriote me retombe sur le cœur, mais je n'ai point de pitié pour des conspirateurs. Nous en avons fait foudroyer 200 d'un coup, et on nous en fait un crime. Ne sait-on pas que c'est encore une marque de sensibilité. Lorsque l'on guillotine 20 coupables, le dernier exécuté meurt 20 fois, tandis que ces 200 conspirateurs périssent ensemble. La foudre populaire les frappe, et semblable à celle du ciel elle ne laisse que le néant et les cendres. On parle de sensibilité! et nous aussi nous sommes sensibles; les Jacobins ont toutes les vertus, ils sont compatissans, humains, généreux; mais tous ces sentimens ils les réservent pour les patriotes qui sont leurs frères, et les aristocrates ne le seront jamais."

Moniteur, 24th Dec. 1793.

soon see how unjustly) "of being cannibals, men of blood; but it is in counter-revolutionary petitions, hawked about for signature by aristocrats, that this charge is made against us.—They examine with the most scrupulous attention how the counter-revolutionists are put to death, and they affect to say that they are not killed at one stroke." (He speaks for himself and his colleague Fouché, and one would suppose that he was going to deny the fact—but nothing like it). "Ah, Jacobins, did Chalier die at the first stroke? &c."—(This Chalier was the Marat of Lyons). "A drop of blood poured from generous veins goes to my heart" (human creature!), "but I have no pity for conspirators." (He however proceeds to state a most undeniable proof of his compassion). "We caused two hundred to be shot at once, and it is charged upon us as a crime!" (Astounding! that such an act of humanity should be called a crime!) "They do not know that it is a proof of our sensibility! When twenty criminals are guillotined, the last of them dies twenty deaths.—But these two hundred conspirators perished at once. They speak of sensibility—we also are full of sensibility! The JACOBINS HAVE ALL THE VIRTUES! They are compassionate, humane, generous!" (This is somewhat hard to be understood, but it is perfectly explained by what follows) "but they reserve these sentiments for the patriots who are their brethren, which the aristocrats never will be."

The only remaining document with which I shall trouble you, is a letter from Fouché to his amiable colleague Collot d'Herbois, which, as might be expected in a confidential communication, breathes all the native tenderness of his soul:—"Let us be terrible, that we

* *Fouché, à Collot d'Herbois, son collègue, et son ami, Membre du Comité de Salut Public.*

"Et nous aussi, mon ami, nous avons contribué à la prise de Toulon, en portant l'épouvante parmi les lâches qui y sont entrés, en offrant à leurs regards des milliers de cadavres de leurs complices.

"La guerre est terminée, si nous savons mettre à profit cette mémorable victoire. Soyons terribles, pour ne pas craindre de devenir faibles ou cruels; anéantissons dans notre colère et d'un seul coup tous les rebelles, tous les conspirateurs, tous les traîtres, pour nous épargner la douleur, le long supplice de les punir en rois.

"Exerçons la justice à l'exemple de la Nature, vengeons-nous en peuple, frappons comme la foudre, et que la cendre même de nos ennemis disparaisse du sol de la liberté.

"Que de toutes parts les perfides et féroces Anglais soient assaillis; que la République entière ne forme qu'un volcan qui lance sur eux la lave dévorante; que l'isle infâme qui produisit ces monstres, qui n'appartiennent

"may run no risk of being feeble or 'cruel'—Let us annihilate in our wrath, at a 'single blow, all rebels, all conspirators, all 'traitors,' (comprehensive words in his vocabulary) 'to spare ourselves the pain, the 'long agony, of punishing like kings!' (Nothing but philanthropy in this worthy man's heart.) 'Let us exercise justice after the 'example of nature, let us avenge ourselves 'like a people, let us strike like the thunder-bolt, and let even the ashes of our enemies 'disappear from the soil of liberty! Let the 'perfidious and ferocious English be attacked 'from every side, let the whole republic form 'a volcano to pour devouring lava upon 'them; may the infamous island which produced these monsters, who no longer belong 'to humanity, be for ever buried under the 'waves of the ocean! Farewell, my friend! 'Tears of joy stream from my eyes,' (we shall soon see for what) 'they deluge my soul!'"

Then follows a little postscript, which explains the cause of this excessive joy, so hyperbolic in its language, and which fully justifies the indignation of the humane writer against the "ferocious English," who are so stupid and so cruel as never to have thought of a benevolent massacre, by way of sparing themselves the pain of punishing individual criminals.

"We have only one way of celebrating victory. We send this evening two hundred and thirteen rebels to be shot!"

Such, gentlemen, is M. Fouché, who is said to have procured this parody to be mixed with the papers of my excellent friend Camille Jordan, to serve as a pretext for his destruction. Fabricated plots are among the most usual means of such tyrants for such purposes; and if Mr. Peltier intended to libel (shall I say?) Fouché by this composition, I can easily understand both the parody and the history of its origin.—But if it be directed against Buonaparté to serve royalist purposes, I must confess myself wholly unable to conceive why Mr. Peltier should have stigmatised his work and deprived it of all authority and power of persuasion, by prefixing to it the infamous name of Fouché.

On the same principle I think one of the observations of my learned friend, on the title of this publication, may be retorted on him—

plus à l'humanité, soit à jamais ensevelie sous les flots de la mer!

"Adieu, mon ami! les larmes de la joie coulent de mes yeux, et s'écoulent mon âme. Le courrier part, je t'écrirai par le courrier ordinaire.

(Signé) "FOUCHÉ."

"P.S. Nous n'avons qu'une manière de célébrer la victoire; nous envoyons ce soir 213 rebelles sous le feu de la foudre. Des courriers extraordinaires vont partir dans le moment pour donner la nouvelle aux armées."

Moniteur, 25th Dec. 1793.

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He has called your attention to the title, "*L'Ambigu, ou Variétés atroces et amusantes*." Now, gentlemen, I must ask, whether, had these been Mr. Peltier's own invectives against Buonaparté, he would himself have branded them as "*atrocious*?"—But if they be specimens of the opinions and invectives of a French faction, the title is very natural, and the epithets are perfectly intelligible.—Indeed I scarce know a more appropriate title for the whole tragi-comedy of the revolution than that of "*atrocious and amusing varieties*."

My learned friend has made some observations on other parts of this publication, to show the spirit which animates the author—but they do not seem to be very material to the question between us. It is no part of my case that Mr. Peltier has not spoken with some unpoliteness, with some flippancy, with more severity than my learned friend may approve, of factions and of administrations in France. Mr. Peltier cannot love the revolution, or any government that has grown out of it and maintains it. The revolutionists have destroyed his family—they have seized his inheritance—they have beggared, exiled, and proscribed himself. If he did not detest them he would be unworthy of living, and he would be a base hypocrite if he were to conceal his sentiments. But I must again remind you, that this is not an information for not sufficiently honouring the French revolution, for not showing sufficient reverence for the Consular government. These are no crimes among us. England is not yet reduced to such an ignominious dependence. Our hearts and consciences are not yet in the bonds of so wretched a slavery. This is an information for a libel on Buonaparté, and if you believe the principal intention of Mr. Peltier to have been to republish the writings or to satirize the character of other individuals, you must acquit him of a libel on the First Consul.

Here, gentlemen, I think I might stop, if I had only to consider the defence of Mr. Peltier. I trust that you are already convinced of his innocence. I fear I have exhausted your patience, as I am sure I have very nearly exhausted my own strength. But so much seems to me to depend on your verdict, that I cannot forbear from laying before you some considerations of a more general nature.

Believing as I do that we are on the eve of a great struggle—that this is only the first battle between reason and power—that you have now in your hands, committed to your trust, the only remains of free discussion in Europe, now confined to this kingdom; addressing you, therefore, as the guardians of the most important interests of mankind; convinced that the unfettered exercise of reason depends more on your present verdict than on any other that was ever delivered by a jury. I cannot conclude without bringing before you the sentiments and examples of

our ancestors in some of those awful and perilous situations by which Divine Providence has in former ages tried the virtue of the English nation. We are fallen upon times in which it behoves us to strengthen our spirits by the contemplation of great examples of constancy. Let us seek for them in the annals of our forefathers.

The reign of queen Elizabeth may be considered as the opening of the modern history of England, especially in its connection with the modern system of Europe, which began about that time to assume the form that it preserved till the French revolution. It was a very memorable period, of which the maxims ought to be engraven on the head and heart of every Englishman. Philip sat at the head of the greatest empire then in the world, was openly aiming at universal domination, and his project was so far from being thought chimerical by the wisest of his contemporaries, that in the opinion of the great Duc de Sully he must have been successful, "if, by a most singular combination" of circumstances, he had not at the same time been resisted by two such strong heads "as those of Henry 4th and Queen Elizabeth." To the most extensive and opulent dominions, the most numerous and disciplined armies, the most renowned captains, the greatest revenue, he added also the most formidable power over opinion. He was the chief of a religious faction, animated by the most atrocious fanaticism, prepared, to second his ambition, by rebellion, anarchy, and regicide, in every Protestant state. Elizabeth was among the first objects of his hostility—That wise and magnanimous Princess placed herself in the front of the battle for the liberties of Europe. Though she had to contend at home with his fanatical faction, which almost occupied Ireland, which divided Scotland, and was not of contemptible strength in England, she aided the oppressed inhabitants of the Netherlands in their just and glorious resistance to his tyranny; she aided Henry the Great, in suppressing the abominable rebellion which anarchical principles had excited and Spanish arms had supported in France, and after a long reign of various fortune, in which she preserved her unconquered spirit through great calamities, and still greater dangers, she at length broke the strength of the enemy, and reduced his power within such limits as to be compatible with the safety of England, and of all Europe. Her only effectual ally was the spirit of her people, and her policy flowed from that magnanimous nature which in the hour of peril teaches better lessons than those of cold reason. Her great heart inspired her with a higher and a nobler wisdom—which disdained to appeal to the low and sordid passions of her people even for the protection of their low and sordid interests, because she knew, or rather she felt, that these are effeminate, creeping, cowardly, short-sighted passions,

which shrink from conflict even in defence of their own mean objects. In a righteous cause she roused those generous affections of her people which alone teach boldness, constancy, and foresight, and which are therefore the only safe guardians of the lowest as well as the highest interests of a nation. In her memorable address to her army, when the invasion of the kingdom was threatened by Spain, this woman of heroic spirit disdained to speak to them of their ease and their commerce, and their wealth and their safety. No! She touched another chord—She spoke of their national honour, of their dignity as Englishmen, of "*the foul scorn that Parma or Spain*" "SHOULD DARE to invade the borders of her realms!" She breathed into them those grand and powerful sentiments which exalt vulgar men into heroes, which led them into the battle of their country armed with bold and irresistible enthusiasm, which even cover with their shield all the ignoble interests that base calculation and cowardly selfishness tremble to hazard, but shrink from defending. A sort of prophetic instinct, if I may so speak, seems to have revealed to her the importance of that great instrument for rousing and guiding the minds of men, of the effects of which she had no experience; which, since her time, has changed the condition of the world; but which few modern statesmen have thoroughly understood or wisely employed; which is no doubt connected with many ridiculous and degrading details, which has produced, and which may again produce, terrible mischiefs; but of which the influence must after all be considered as the most certain effect and the most efficacious cause of civilization, and which, whether it be a blessing or a curse, is the most powerful engine that a politician can move—I mean THE PRESS.

It is a curious fact, that, in the year of the Armada, Queen Elizabeth caused to be printed the first Gazette that ever appeared in England! and I own when I consider that this mode of rousing a national spirit was then absolutely unexampled, that she could have no assurance of its efficacy from the precedents of former times, I am disposed to regard her having recourse to it as one of the most sagacious experiments, one of the greatest discoveries of political genius, one of the most striking anticipations of future experience, that we find in history. I mention it to you, to justify the opinion that I have ventured to state, of the close connection of our national spirit with our press, and even our periodical press. I cannot quit the reign of Elizabeth without laying before you the maxims of her policy, in the language of the greatest and wisest of men:—Lord Bacon, in one part of his discourse on her reign, speaks thus of her support of Holland: "But let me rest upon the honourable and continual aid and relief she hath given to the distressed and desolate people of the Low Countries; a people recommended unto her by ancient

"confederacy and daily intercourse, by their cause so innocent, and their fortune so lamentable!"—In another passage of the same discourse, he thus speaks of the general system of her foreign policy, as the protector of Europe, in words too remarkable to require any commentary: "Then it is her government, and her government alone, that hath been the source and fort of all Europe, which hath let this proud nation from over-running all. If any state be yet free from his factions erected in the bowels thereof; if there be any state wherein this faction is erected that is not yet fired with civil troubles; if there be any state under his protection that enjoyeth moderate liberty, upon whom he tyrannizeth not; it is the mercy of this renowned queen that standeth between them and their misfortunes!"

The next great conspirator against the rights of men and of nations, against the security and independence of all European states, against every kind and degree of civil and religious liberty, was Louis 14th. In his time the character of the English nation was the more remarkably displayed, because it was counteracted by an apostate and perfidious government. During great part of his reign, you know that the throne of England was filled by princes who deserted the cause of their country and of Europe, who were the accomplices and the tools of the oppressor of the world who were even so unmanly, so unprincely, so base, as to have sold themselves to his ambition; who were content that he should enslave the continent, if he enabled them to enslave Great Britain. These princes, traitors to their own royal dignity and to the feelings of the generous people whom they ruled, preferred the condition of the first slave of Louis 14th to the dignity of the first freeman of England, yet, even under these princes the feelings of the people of this kingdom were displayed on a most memorable occasion towards foreign sufferers and foreign oppressors. The revocation of the Edict of Nantz, threw fifty thousand French Protestants on our shores—They were received, as I trust the victims of tyranny ever will be in this land, which seems chosen by Providence to be the home of the exile—the refuge of the oppressed. They were welcomed by a people high-spirited as well as humane, who did not insult them by clandestine charity—who did not give alms in secret lest their charity should be detected by the neighbouring tyrants! No! they were publicly and nationally welcomed and relieved. They were bid to raise their voice against their oppressor, and to proclaim their wrongs to all mankind. They did so. They were joined in the cry of just indignation by every Englishman worthy of the name. It was a fruitful indignation which soon produced the successful resistance of all Europe to the common enemy. Even then, when Jeffries disgraced the bench which his lordship now adorns, no refugee was de-

tertred by prosecution for libel from giving vent to his feelings, from arraigning the oppressor in the face of all Europe.

During this ignominious period of our history, a war arose on the continent, which cannot but present itself to the mind on such an occasion as this; the only war that was ever made on the avowed ground of attacking a free press, I speak of the invasion of Holland by Louis 14th. The liberties which the Dutch gazettes had taken in discussing his conduct were the sole cause of this very extraordinary and memorable war, which was of short duration, unprecedented in its avowed principle, and most glorious in its event for the liberties of mankind, that republic, at all times so interesting to Englishmen,—in the worst times of both countries our brave enemies,—in their best times our most faithful and valuable friends,—was then charged with the defence of a free press against the oppressor of Europe, as a sacred trust for the benefit of all generations. They felt the sacredness of the deposit, they felt the dignity of the station in which they were placed, and though deserted by the Un-English government of England they asserted their own ancient character and drove out the great armies and great captains of the oppressor with defeat and disgrace. Such was the result of the only war hitherto avowedly undertaken to oppress a free country because she allowed the free and public exercise of reason: and may the God of justice and liberty grant that such may ever be the result of wars made by tyrants against the rights of mankind, especially against that right which is the guardian of every other.

This war, gentlemen, had the effect of raising up from obscurity the great prince of Orange, afterwards king William 3rd. The deliverer of Holland, the deliverer of England, the deliverer of Europe,—the only hero who was distinguished by such a happy union of fortune and virtue that the objects of his ambition were always the same with the interests of humanity; perhaps, the only man who devoted the whole of his life exclusively to the service of mankind. This most illustrious benefactor of Europe—this "hero without vanity or passion," as he has been justly and beautifully called by a venerable prelate who never made a step towards greatness without securing or advancing liberty, who had been made stadtholder of Holland for the salvation of his own country, was soon after made king of England for the deliverance of ours. When the people of Great Britain had once more a government worthy of them, they returned to the feelings and principles of their ancestors, and resumed their former station and their former duties as protectors of the independence of nations. The people of England, delivered from a government which disgraced, oppressed and betrayed them, fought under

William as their forefathers had fought under Elizabeth and after an almost uninterrupted struggle of more than twenty years, in which they were often abandoned by fortune, but never by their own constancy and magnanimity, they at length once more defeated those projects of guilty ambition, boundless aggrandisement, and universal domination, which had a second time threatened to overwhelm the whole civilized world: They rescued Europe from being swallowed up in the gulph of extensive empire, which the experience of all times points out as the grave of civilization, where men are driven by violent conquest and military oppression into lethargy and slavishaess of heart, where after their arts have perished with the mental vigour from which they spring, they are plunged by the combined power of effeminacy and ferocity into irreclaimable and hopeless barbarism. Our ancestors established the safety of their own country by providing for that of others, and rebuilt the European system upon such firm foundations, that nothing less than the tempest of the French revolution could have shaken it.

This arduous struggle was suspended for a short time by the peace of Ryswick. The interval between that treaty and the war of the succession enables us to judge how our ancestors acted in a very peculiar situation which requires maxims of policy very different from those which usually govern states. The treaty which they had concluded was in truth and substance only a truce. The ambition and the power of the enemy were such as to render real peace impossible; and it was perfectly obvious that the disputed succession of the Spanish monarchy would soon render it no longer practicable to preserve even the appearance of amity. It was desirable, however, not to provoke the enemy by unseasonable hostility; but it was still more desirable, it was absolutely necessary, to keep up the national jealousy and indignation against him who was soon to be their open enemy. It might naturally have been apprehended that the press might have driven into premature war a prince who not long before had been violently exasperated by the press of another free country. I have looked over the political publications of that time with some care, and I can venture to say, that at no period were the system and projects of Louis 14th animadverted on with more freedom and boldness than during that interval. Our ancestors and the heroic prince who governed them, did not deem it wise policy to disarm the national mind for the sake of prolonging a truce. They were both too proud and too wise to pay so great a price for so small a benefit.

In the course of the eighteenth century, a great change took place in the state of political discussion in this country—I speak of the multiplication of newspapers. I know that newspapers are not very popular in this place, which is, indeed, not very surprising, because

they are known here only by their faults. Their publishers come here only to receive the chastisement due to their offences. With all their faults, I own, I cannot help feeling some respect for whatever is a proof of the increased curiosity and increased knowledge of mankind, and I cannot help thinking, that if somewhat more indulgence and consideration were shown for the difficulties of their situation, it might prove one of the best correctives of their faults, by teaching them that self-respect which is the best security for liberal conduct towards others. But however that may be, it is very certain that the multiplication of these channels of popular information has produced a great change in the state of our domestic and foreign politics. At home it has, in truth produced a gradual revolution in our government. By increasing the number of those who exercise some sort of judgment on public affairs, it has created a substantial democracy, infinitely more important than those democratical forms which have been the subject of so much contest. So that I may venture to say, England has not only in its *forms* the most democratical government that ever existed in a great country, but in *substance* has the most democratical government that ever existed in any country; if the *most substantial* democracy be that state in which the greatest number of men feel an interest and express an opinion upon political questions, and in which the greatest number of judgments and wills concur in influencing public measures.

The same circumstance gave great additional importance to our discussion of continental politics. That discussion was no longer, as in the preceding century, confined to a few pamphlets, written and read only by men of education and rank, which reached the multitude very slowly and rarely.—In newspapers an almost daily appeal was made, directly or indirectly, to the judgment and passions of almost every individual in the kingdom, upon the measures and principles not only of his own country, but of every state in Europe. Under such circumstances, the tone of those publications in speaking of foreign governments became a matter of importance. You will excuse me, therefore, if, before I conclude I remind you of the general nature of their language on one or two very remarkable occasions, and of the boldness with which they arraigned the crimes of powerful sovereigns, without any check from the laws, and magistrates of their own country. This toleration, or rather this protection, was too long and uniform to be accidental. I am, indeed, very much mistaken if it be not founded upon a policy which this country cannot abandon without sacrificing her liberty and endangering her national existence.

The first remarkable instance which I shall choose to state of the unpunished and protected boldness of the English press, of the freedom with which they animadverted on the policy

of powerful sovereigns is the partition of Poland in 1772: an act not perhaps so horrible in its means, nor so deplorable in its immediate effects, as some other atrocious invasions of national independence which have followed it—but the most abominable in its general tendency and ultimate consequences of any political crime recorded in history, because it was the first practical breach in the system of Europe, the first example of atrocious robbery perpetrated on unoffending countries which has been since so liberally followed and which has broken down all the barriers of habit and principle which guarded defenceless states. The perpetrators of this atrocious crime were the most powerful sovereigns of the continent, whose hostility it certainly was not the interest of Great Britain wantonly to incur. They were the most illustrious princes of their age, and some of them were doubtless entitled to the highest praise for their domestic administration, as well as for the brilliant qualities which distinguished their character. But none of these circumstances, no dread of their resentment, no admiration of their talents, no consideration for their rank, silenced the animadversion of the English press. Some of you remember, all of you know, that a loud and unanimous cry of reprobation and execration broke out against them from every part of this kingdom. It was perfectly uninfluenced by any considerations of our own mere national interest, which might perhaps be supposed to be rather favourably affected by that partition. It was not, as in some other countries, the indignation of rival robbers, who were excluded from their share of the prey—it was the moral anger of disinterested spectators against atrocious crimes, the gravest and the most dignified moral principle which the God of Justice has implanted in the human heart, that of which the dread is the only restraint on the actions of powerful criminals, and of which the promulgation is the only punishment that can be inflicted on them. It is a restraint which ought not to be weakened—it is a punishment which no good man can desire to mitigate.

That great crime was spoken of as it deserved in England. Robbery was not described by any courtly circumlocutions. Rapine was not called policy—nor was the oppression of an innocent people termed a *mediation* in their domestic differences. No prosecutions, no criminal informations, followed the liberty and the boldness of the language then employed. No complaints even appear to have been made from abroad—much less any insolent menaces against the free constitution which protected the English press. The people of England were too long known throughout Europe for the proudest potentate to expect to silence our press by such means.

I pass over the second partition of Poland in 1793—you all remember what passed on that occasion, the universal abhorrence expressed by every man and every writer of every

party, the succours that were publicly preparing by large bodies of individuals of all parties for the oppressed Poles—I hasten to the final dismemberment of that unhappy kingdom, which seems to me the most striking example in our history of the habitual, principled, and deeply rooted forbearance of those who administer the law towards political writers.

We were engaged in the most extensive, bloody, and dangerous war that this country ever knew, and the parties to the dismemberment of Poland were our allies, and our only powerful and effective allies. We had every motive of policy to court their friendship—every reason of state seemed to require that we should not permit them to be abused and vilified by English writers. What was the fact? Did any Englishman consider himself at liberty, on account of temporary interests, however urgent, to silence those feelings of humanity and justice which guard the certain and permanent interests of all countries? You all remember that every voice, and every pen, and every press in England were unceasingly employed to brand that abominable robbery. You remember that this was not confined to private writers, but that the same abhorrence was expressed by every member of both houses of parliament who was not under the restraints of ministerial reserve. No minister dared even to blame the language of honest indignation which might be very inconvenient to his most important political projects; and I hope I may venture to say, that no English assembly would have endured such a sacrifice of eternal justice to any miserable interest of an hour. Did the law officers of the crown venture to come into a court of justice to complain of the boldest of the publications of that time? They did not. I do not say that they felt any disposition to do so—I believe that they could not. But I do say, that if they had—if they had spoken of the necessity of confining our political writers to cold narrative and unfeeling argument; if they had informed the jury, that they did not prosecute history, but invective; that if private writers be at all to blame great princes, it must be with moderation and decorum, the sound heads and honest hearts of an English jury would have confounded such sophistry, and declared by their verdict, that moderation of language is a relative term, which varies with the subject to which it is applied; that atrocious crimes are not to be related as calmly and coolly as indifferent or trifling events; that if there be a decorum due to exalted rank and authority, there is also a much more sacred decorum due to virtue and to human nature, which would be outraged and trampled under foot, by speaking of guilt in a lukewarm language, falsely called moderate.

Soon after, gentlemen, there followed an act, in comparison with which all the deeds of rapine and blood perpetrated in the world are innocence itself—the invasion and destruction

of Switzerland, that unparalleled scene of guilt and enormity; that unprovoked aggression against an innocent country, which had been the sanctuary of peace and liberty for three centuries; respected as a sort of sacred territory by the fiercest ambition, raised, like its own mountains, beyond the region of the storms which raged around on every side; the only warlike people that never sent forth armies to disturb their neighbours; the only government that ever accumulated treasures without imposing taxes—an innocent treasure, unstained by the tears of the poor, the inviolate patrimony of the commonwealth, which attested the virtue of a long series of magistrates, but which at length caught the eye of the spoiler, and became the fatal occasion of their ruin! Gentlemen, the destruction of such a country, "its cause so innocent, and its fortune so lamentable, made a deep impression on the people of England. I will ask my learned friend, if we had then been at peace with the French Republic, whether we must have been silent spectators of the foulest crimes that ever blotted the name of humanity! whether we must, like cowards and slaves, have repressed the compassion and indignation with which that horrible scene of tyranny had filled our hearts? Let me suppose, gentlemen, that Aloys Reding, who has displayed in our times, the simplicity, magnanimity, and piety of ancient heroes, had, after his glorious struggle, honoured this kingdom by choosing it as his refuge; that, after performing prodigies of valour at the head of his handful of heroic peasants on the field of Morgarten, where his ancestor, the Landamman Reding, had, five hundred years before, defeated the first oppressors of Switzerland, he had selected this country to be his residence, as the chosen abode of liberty, as the ancient and inviolable asylum of the oppressed; would my learned friend have had the boldness to have said to this hero, "That he must hide his tears" (the tears shed by a hero over the ruins of his country!) "lest they might provoke the resentment of Reubell or Rapinat! that he must smother the sorrow and the anger with which his heart was loaded; that he must breathe his murmurs low, lest they might be overheard by the oppressor!" Would this have been the language of my learned friend? I know that it would not. I know, that by such a supposition, I have done wrong to his honourable feelings, to his honest English heart. I am sure that he knows as well as I do, that a nation which should *thus* receive the oppression of other countries, would be preparing its own neck for the yoke. He knows the slavery which such a nation would deserve, and must speedily incur. He knows, that sympathy with the unmerited sufferings of others, and disinterested anger against their oppressors, are, if I may so speak, the masters which are appointed by Providence to teach us fortitude in the defence of our own rights:

that selfishness is a dastardly principle, which betrays its charge and flies from its post; and that those only can defend themselves with valour, who are animated by the moral approbation with which they can survey their sentiments towards others, who are ennobled in their own eyes by a consciousness that they are fighting for justice as well as interest; a consciousness which none can feel, but those who have felt for the wrongs of their brethren. These are the sentiments which my learned friend would have felt. He would have told the hero: "Your confidence is not deceived: this is still that England, of which the history may, perhaps, have contributed to fill your heart with the heroism of liberty. Every other country of Europe is crouching under the bloody tyrants who destroyed your country. We are unchanged; we are still the same people which received with open arms the victims of the tyranny of Philip 2d. and Louis 14th. We shall not exercise a cowardly and clandestine humanity! Here we are not so dastardly as to rob you of your greatest consolation. Here, protected by a free, brave, and high-minded people, you may give vent to your indignation; you may proclaim the crimes of your tyrants, you may devote them to the execration of mankind; there is still one spot upon earth in which they are abhorred, without being dreaded!"

I am aware, gentlemen, that I have already abused your indulgence; but I must entreat you to bear with me for a short time longer, to allow me to suppose a case which might have occurred, in which you will see the horrible consequences of enforcing rigorously principles of law, which I cannot contest, against political writers. We might have been at peace with France during the whole of that terrible period which elapsed between August 1793 and 1794, which has been usually called the reign of Robespierre! The only series of crimes, perhaps, in history, which, in spite of the common disposition to exaggerate extraordinary facts, has been beyond measure under-rated in public opinion. I say this, gentlemen, after an investigation, which I think entitles me to affirm it with confidence. Men's minds were oppressed by the atrocity and the multitude of crimes; their humanity and their indolence took refuge in scepticism from such an overwhelming mass of guilt; and the consequence was, that all these unparalleled enormities, though proved, not only with the fullest historical, but with the strictest judicial evidence, were at the time only half believed, and are now scarcely half remembered. When these atrocities were daily perpetrating, of which the greatest part are as little known to the public in general as the campaigns of Genghis Khan, but are still protected from the scrutiny of men by the immensity of those voluminous records of guilt in which they are related, and under the mass of which they will lie buried,

till some historian be found with patience and courage enough to drag them forth into light, for the shame, indeed, but for the instruction of mankind; when these crimes were perpetrating, which had the peculiar malignity, from the pretexts with which they were covered, of making the noblest objects of human pursuit seem odious and detestable; which had almost made the names of liberty, reformation, and humanity, synonymous with anarchy, robbery, and murder; which thus threatened not only to extinguish every principle of improvement, to arrest the progress of civilized society, and to disinherit future generations of that rich succession, which they were entitled to expect from the knowledge and wisdom of the present, but to destroy the civilization of Europe, which never gave such a proof of its vigour and robustness, as in being able to resist their destructive power; when all these horrors were acting in the greatest empire of the continent, I will ask my learned friend, if we had then been at peace with France, how English writers were to relate them so as to escape the charge of libelling a friendly government?

When Robespierre, in the debates in the national convention on the mode of murdering their blameless sovereign, objected to the formal and tedious mode of murder called a trial, and proposed to put him immediately to death without trial, "*on the principles of insurrection*," because, to doubt the guilt of the king would be to doubt of the innocence of the convention, and if the king were not a traitor, the convention must be rebels; would my learned friend have had an English writer state all this with "*decorum and moderation*?" would he have had an English writer state, that though this reasoning was not perfectly agreeable to our national laws, or perhaps to our national prejudices, yet it was not for him to make any observations on the judicial proceedings of foreign states?

When Marat, in the same convention, called for two hundred and seventy thousand heads, must our English writers have said, that the remedy did, indeed, seem to their weak judgment rather severe; but that it was not for them to judge the conduct of so illustrious an assembly as the National Convention, or the suggestions of so enlightened a statesman as M. Marat?

When that convention resounded with applause at the news of several hundred aged priests being thrown into the Loire and particularly at the exclamation of Carrier, who communicated the intelligence, "*What a revolutionary torrent is the Loire!*" when these suggestions and narratives of murder, which have hitherto been only hinted and whispered in the most secret cabals, in the darkest caverns of banditti, were triumphantly uttered, patiently endured, and even loudly applauded by an assembly of seven hundred men, acting in the sight of all Europe, would my learned friend have wished that there had

been found in England a single writer so base as to deliberate upon the most safe, decorous, and polite manner of relating all these things to his countrymen?

When Carrier ordered five hundred children under fourteen years to be shot, the greater part of whom escaped the fire from their size, when the poor victims run for protection to the soldiers, and were bayoneted clinging round their knees! would my friend—but I cannot pursue the strain of interrogation! it is too much! It would be a violence which I cannot practise on my own feelings—It would be an outrage to my friend—It would be an affront to you—It would be an insult to humanity. No! Better, ten thousand times better, would it be that every press in the world were burnt, that the very use of letters were abolished, that we were returned to the honest ignorance of the rudest times—than that the results of civilization should be made subservient to the purposes of barbarism—than that literature should be employed to teach a toleration for cruelty, to weaken moral hatred for guilt, to deprave and brutalize the human mind. I know that I speak my friend's feelings as well as my own, when I say, God forbid that the dread of any punishment should ever make any Englishman an accomplice in so corrupting his countrymen, a public teacher of depravity and barbarity!

Mortifying and horrible as the idea is, I must remind you, gentlemen, that even at that time, even under the reign of Robespierre, my learned friend, if he had then been attorney general, might have been compelled by some most deplorable necessity, to have come into this court to ask your verdict against the libellers of Barrere and Collot d'Herbois. Mr. Peltier then employed his talents against the enemies of the human race, as he has uniformly and bravely done. I do not believe that any peace, any political considerations, any fear of punishment, would have silenced him. He has shown too much honour and constancy, and intrepidity, to be shaken by such circumstances as these.

My learned friend might then have been compelled to have filed a criminal information against Mr. Peltier, for "wickedly and maliciously intending to vilify and degrade Maximilian Robespierre, President of the Committee of Public Safety of the French Republic!" He might have been reduced to the sad necessity of appearing before you to belie his own better feelings; to prosecute Mr. Peltier for publishing those sentiments which my friend himself had a thousand times felt, and a thousand times expressed. He might have been obliged even to call for punishment upon Mr. Peltier, for language which he and all mankind would for ever despise Mr. Peltier if he were not to employ. Then indeed, gentlemen, we should have seen the last humiliation fall on England; the tribunals, the spotless and venerable tribunals

of this free country, reduced to be the ministers of the vengeance of Robespierre! What could have rescued us from this last disgrace? The honesty and courage of a jury. They would have delivered the judges of their country from the dire necessity of inflicting punishment on a brave and virtuous man, because he spoke truth of a monster. They would have despised the threats of a foreign tyrant as their ancestors braved the power of oppressors at home.

In the court where we are now met, Cromwell twice sent a satirist on his tyranny to be convicted and punished as a libeller, and in this court, almost in sight of the scaffold streaming with the blood of his sovereigns, within hearing of the clash of his bayonets which drove out parliaments with contumely, two successive juries rescued the intrepid satirist* from his fangs, and sent out with defeat and disgrace the usurper's attorney general from what he had the insolence to call his court! Even then, gentlemen, when all law and liberty were trampled under the feet of a military banditti; when those great crimes were perpetrated on a high place and with a high hand against those who were the objects of public veneration, which more than any thing else upon earth overwhelm the minds of men, break their spirits, and confound their moral sentiments, obliterate the distinctions between right and wrong in their understanding, and teach the multitude to feel no longer any reverence for that justice which they thus see triumphantly dragged at the chariot wheels of a tyrant;—Even then, when this unhappy country, triumphant indeed abroad, but enslaved at home, had no prospect but that of a long succession of tyrants wading through slaughter to a throne—even then, I say, when all seemed lost, the unconquerable spirit of English liberty survived in the hearts of English jurors. That spirit is, I trust in God, not extinct: and if any modern tyrant were, in the drunkenness of his insolence, to hope to overawe an English jury, I trust and I believe that they would tell him: "Our ancestors braved the bayonets of Cromwell—we bid defiance to yours. *"Contempni Catiline gladio—non pertimescamus tuos!"*

What could be such a tyrant's means of overawing a jury? As long as their country exists, they are girt round with impenetrable armour. Till the destruction of their country no danger can fall upon them for the performance of their duty, and I do trust that there is no Englishman so unworthy of life as to desire to outlive England. But if any of us are condemned to the cruel punishment of surviving our country—if in the inscrutable counsels of Providence, this favoured seat of justice and liberty, this noblest work of human wisdom and virtue, be destined to destruction, which, I shall not be charged with

* Lilburne.

national prejudice for saying, would be the most dangerous wound ever inflicted on civilization; at least let us carry with us into our sad exile the consolation that we ourselves have not violated the rights of hospitality to exiles—that we have not torn from the altar the suppliant who claimed protection as the voluntary victim of loyalty and conscience!

Gentlemen, I now leave this unfortunate gentleman in your hands. His character and his situation might interest your humanity—but, on his behalf, I only ask justice from you. I only ask a favourable construction of what cannot be said to be more than ambiguous language, and this you will soon be told from the highest authority is a part of justice.

REPLY.

Mr. Attorney General.—May it please your Lordship; Gentlemen of the Jury:—In rising, gentlemen, to address myself to you, on the part of the prosecution, after your attention has been so long rivetted to one of the most splendid displays of eloquence I ever had occasion to hear; after your understandings have been so long dazzled by the contemplation of that most splendid exhibition, I cannot but fear, that whatever the feeble light of such understandings as mine can present to you, I can scarcely feel a hope of making any impression on your senses. And if I felt, on this occasion, that there was any necessity to answer much of my learned friend's speech, I should feel myself embarked in an undertaking, in which it was absolutely necessary I should fail. But after giving the utmost attention, that could be bestowed to the whole of his argument, I think I may venture to say, my task does not present much of my friend's speech to answer. I apprehend there are some things to observe upon, some things to apply in my own favour, and some things to give a different application to, than that which has been attempted to be given by my friend himself. There are, most unquestionably, many topics on which he has expatiated, which, without any derogation to him, are rather irrelevant to the present discussion. There are some points to be considered.

The points to be considered, respect the character of the prosecutor and the defendant; the character of the prosecution before you; the character of similar prosecutions, as they ought to be conducted, and as it seems they are likely to be conducted in this country; and the character of the publication, itself, which is now under your consideration.

Gentlemen, with regard to the prosecutor, my learned friend has told you—with what consistency, as applied to some part of the observations he addressed to the libels themselves, I must leave to him to reconcile;—he has told you, the prosecutor of this information is the chief magistrate of France. Gentlemen, I deny it. The prosecutor is the chief magistrate of the country in which we live, feebly represented by his unworthy servant in

this place. It is the prosecution of the king of Great Britain, who is capable even at this moment of giving protection, having according to the admission of my friend, given most effectual protection, to the person even now standing for judgment. But it seems the person now under this protection is attempted to be crushed and trampled upon and destroyed. Gentlemen, I must beg leave to say, when at the same moment you are told this very emigrant is defended in his asylum in this country, and when it is represented to you—from I know not what authority, but, however, from my friend's authority (and he may have means of knowing the wishes of the sovereign),—that, instead of being in the situation of any other defendant, he, it seems, was to be hunted out of the country;—I say, when this is the character to be attributed untruly to the administration of the government of this country, it will deserve the most serious attention of juries. But I think you need not at least apprehend, that at this moment, that fatal period of English liberty is arrived, in which you are to be called upon on principles new to the administration of English justice, to give a verdict against the defendant, not because these are libels on the principles of law, but because they are offensive to the chief magistrate of another country.

With respect to the defendant himself, he stands clothed with all the advantages and benefits which the English law can give to an English subject. Protected he has been by the best exertions, and he now stands to be judged not on any new principles, but on those principles which I stated to you in my opening, and which my friend has done me the justice to say, are the principles on which he should be tried.

My learned friend has told you, this prosecution is the first of a long series of prosecutions which are likely to be instituted against the liberty of free discussion in this country.—I trust in forming your judgment on this prosecution, you will not form it on any apprehension of prosecutions that may hereafter be likely to arise.—You will consider not whether there may be at some distant period a number of such prosecutions, but whether this is one of them; whether there is any thing in this case, that can justify any man in saying, it is one of them; whether I cannot coolly call upon you for a verdict on any principle, on which during the best times of the administration of justice and law in this country, juries have uniformly given them; and whether in calling on you for this verdict I endeavour, in the slightest degree, to trench on the freedom of discussion—the privilege of history—which he has done me the justice to say I have distinctly admitted.

Gentlemen, this is a prosecution of the English press. My friend has told you a great number of truths with respect to this privilege and this liberty. He has told you, that in

former times there was no cowardly selfishness, disposing the government of the country or its ministers to restrain free discussion on arbitrary power. Is there any thing in this case like an attempt, that can be characterised as cowardly, much more an attempt to restrain any discussion at all? My friend has told you, it is necessary that the freedom of discussion should be preserved entire, and that it is peculiarly necessary to have publications of this sort, to rouse the spirit of the people, and to clothe them with the armour of anger and indignation against those, who are about to become their enemies. My case to you is, that we may not suffer at the time this armour is preparing; it is the means by which the sword of anger and indignation is put into the hands of those, who but for this attempt would not have become your enemies at all. Not that I mean to say on the mere circumstance of a publication, a war is instantly likely to break out: no; but I know, in the communications between two great and neighbouring countries, there are many things to be compromised, and the preparing this state of irritation may render it impossible for parties to come together on equal terms, and to compromise things, which they might possibly have otherwise compromised, and to settle differences without having recourse to hostilities; and therefore publications of this sort are dangerous.

It has not been the policy of the law to fix precise boundaries to that which may be considered as free discussion in history, and that which is to be held a libel. Are we near that boundary in this case? If we are near that boundary, there may be some ground to pause; but as it seems to me, there is not only nothing that can approach that boundary, but there is nothing which the ingenuity of man can state, that partakes of the nature of history or of free discussion, in the publication now under consideration.

My friend has likewise said, if I prosecute this gentleman, upon what principle have I forbore to prosecute many publications given to the public? and particularly one which was brought to your consideration and attention, a republication which charged his present majesty with being the accomplice of assassins? My friend told you the reason: because it was not republished in this country, with any malignant or wicked intention to libel the character of his majesty. On the contrary, the English newspapers rescued him from the possibility of having such an imputation cast on him. Is it so clear, that the author of the present publication meant to rescue the character of the First Consul from the imputation it casts on him by this charge? But, gentlemen, give me leave to ask you, whether, when my friend was commenting on the great importance, on the atrocity of that libel which he wondered I did not prosecute, in charging our monarch to be an assassin, did it not occur to you, will it not occur to every one, and am I

not right in saying,—as it will be for your consideration by-and-by, to pronounce whether the paper I prosecute be in itself an incitement to assassination?—will it not be material for you to consider, whether if the English law would protect, and the English government and the English monarch would protect the author of such a publication, whether his character would be quite so clear that he did not furnish an encouragement to assassination? Now, gentlemen, place yourselves for a moment as the subjects of another country, and then ask, whether such a publication as that, coming from this country, would have no influence upon your minds, whether it would appear indifferent, or whether it would not excite indignation against England itself? That strongly illustrates the effect that may be produced in another country, in irritating the dispositions of that country against the people of England, and in exciting that indignation and resentment, which we should all feel in a similar case; and from our own feelings we must judge of those of other men. What are likely to be the feelings of a principal magistrate in another country, when he sees the object of a libel is to defame and vilify him, and when the object of it is an incitement, such as I describe this publication to contain?

Gentlemen, my friend has asked many questions of what I should have done on many occasions during the French Revolution, if we had happened to be at peace with France, instead of being at war; if publications in newspapers had discussed with freedom the events he referred to, whether I should have thought it necessary to institute prosecutions, to vindicate the characters of Robespierre or Marat? He has asked, likewise, whether if, at the great event of the first invasion of Switzerland, instead of being at war with France we had been at peace, and there had been the same freedom of discussion exercised by the English newspapers, what I would have done on that occasion, and whether I should have prosecuted individuals, for discussing such a remarkable event?—Though the first invasion of Switzerland took place during the time of war, yet there have been scenes acted in that unhappy country, since those which were described with all the eloquence of my learned friend, equally, if not more, atrocious, than the original scenes of destruction there acted. He asks me what I would have done, what did I do? Were not these transactions the subject of free discussion by the English papers? Now I will ask, whether there was not, in some of them, some departure from a decent consideration of those events? but they were historical narrations of those events, fairly elicited from the circumstances on the minds of those who wrote on them: and although we are slated to receive mandates from France, what we are to prosecute, no English jury has been called upon to give judgment on such narra-

tive as this. That is the best answer that can be given.

Having now adverted a little to the observations he made with regard to the nature of free discussion, and the disposition with which it ought to be received by juries; I think I may venture to say, there is no one sentiment he expressed, with respect to the necessity and the legality of freedom of discussion, of the privileges of historical narration, which was not stated and admitted by me as distinctly, though, God knows, much more feebly and weakly, than it was afterwards delivered by him. During a great part of my friend's speech—a most able and eloquent address—he enforced propositions and truths on your minds, which might look as if he were advancing truths I had denied, and controverting propositions I had advanced; when only, with terms and eloquence which do not belong to me, he was enforcing the same principles, and carrying to your conviction and understanding the justice and the truth of those propositions, which I had admitted to be the law of the country before.

Having made these observations, and knowing how much of your time has been devoted to this case, I shall now proceed to the publication itself, to see whether there is any thing of the character of history and sober discussion belonging to it, that can justify my friend in saying, you are called on by your duty to give a verdict for the defendant. It is stated to you, that this is a peculiarly harmless publication—that it is printed in a language unknown to the majority of readers in England; and at a time when scarcely any thing can enter the continent: but it is written in the French language, and addressed to French understandings, and to French readers; and though the difficulty he describes may be extremely great, yet the press of England may furnish security to French libellers, if they are so permitted. Will it not be more offensive to the French government? Does it profess to elucidate the English history? It must be calculated for the proper meridian. He tells you it is the last journal in Europe, that dares to speak of the French government those truths which in every other quarter are suppressed and prevented. Is not this of itself a circumstance, that entitles it to no great favour with those who are likely to be attacked by it? It is not merely in France that injury may be done. From England to every court on the continent that publication may circulate, slandering the first magistrate of that kingdom. Let me ask you, supposing not one of them to enter into France, whether that circumstance alone would not alienate the affection of the French government from us?

Then it is said, with respect to the matter contained in this publication, it was innocent pleasantry, and published for the purpose of consoling the French emigrants. Though the sentiments of Mr. Peltier may be those of

a royalist, does it necessarily follow, therefore, that they may be innocent? If he feels like other royalists in this country and other countries, is it improbable that the present possessor of the throne of that country may be the object of his detestation and abhorrence? Is it improbable they should wish to remove him who is in possession of the throne of their king?

With respect to the object and tendency of the publication under our consideration, you must collect them from the publication itself; and if you have not evidence from which a contrary inference is to be collected, you must find them in the temper, mind, and intention of the person who publishes it. My friend has told you, the republication of a writing, originally a libel, is not necessarily libellous: but I think it behoves the republisher of that which is deemed to be originally libellous, to put himself in a condition of showing, that he republished it with some other view; and to rescue himself, he must shew that he did it with another intention, and that he did not intend the effect to be produced, which was natural from the libel he republished. And if you had your attention directed to the introduction of this work, and saw what it is, I think you will find no reason to lead you to believe, that it was republished with a different intention on the part of the defendant than to vilify and defame the character of the person against whom it is directed.

I shall read this passage, which I think is worthy of your attention. He says he should be extremely moderate on the chapter of politics [*reads two sentences*].

Now, gentlemen, I think it is impossible to doubt on that, what his intention was.

There is another passage [*reads two or three sentences, beginning at where Polybius is introduced*].

From this, gentlemen, you are to collect the purpose and intention of the writer. The passage I originally introduced, shows there is no one part of any paper, of any description he is to bring forward, which is not to refer to the object I alluded to. I shall repeat his words:—"We shall add but one word more. We shall so manage matters, that all the materials which we shall employ in the edifice that we are about to erect to the glory of Buonaparté"—What is this, gentlemen? What are we to understand by the edifice he is about to erect to the glory of Buonaparté? Does not this clearly show Buonaparté is to be the object of it? "shall be worthy of the Temple?"

Having, by all these introductory passages, shown the intention of the author, it is hardly necessary to comment on the passages themselves, which have been selected, and which are to be found in the information. My friend seems to admit, that there is much libellous matter in these publications; but, he says, they are not libels against Buonaparté, and

that they were only meant to reflect disgrace on certain factions that existed in France. Now it is rather extraordinary, that my friend should have observed, in the course of his speech, that Buonaparté was the author of this prosecution, if it was not a libel against him, but a libel on certain parties at Paris, who were his enemies. That is a part, which, I think, is not very easily to be reconciled.

My friend has dealt with more asperity than he ought to have applied to the allusion to the dagger of Brutus; and has said, that it was not necessarily to be considered as an incentive to assassination. Gentlemen, I say when treating of the government of France at present under the consulship of Buonaparté, and treating of the government of Rome under the dictator, a comparison is drawn between the fate of each, and then it is said, in allusion to the dagger of Brutus, there was not found in the one that resistance to tyranny, which was found in the other: I say that was holding out, not merely the character of Brutus, but pointing out most distinctly, as was stated in the inuendoes, that which was the last resource for the people of France to have recourse to, and as not disgraceful and base even in those who have recourse to it. It is supposed I am rather forgetful of the history, in supposing it necessarily recommends assassination, because my learned friend has told you a few of the Roman emperors received the honours of divinity before their death. Apotheosis means, let them only have divine honours during their life, and let him have the pleasure to enjoy them; but that was not the case of Romulus, who had, according to the history or fable, fallen by the assassin, before he was ranked among the number of the gods: "And Romulus recalls the thing to mind," it is not Augustus, it is not Tiberius, who were received into the number of the gods before their death, but it is the man who suffered assassination before he was received into the heavens. And it is that, which is here given as the wish and as the prayer of the patriots of that day: and he wishes Buonaparté may have that the next day. That, gentlemen, is the object and nature of his prayer.

But this, it seems, is a publication for which Mr. Peltier is not answerable. Instead of his being the author of it, it was written by a Dutchman, and for the detection of which sufficient information is promised, when Fouché shall have completed his police establishment in Leicester-square. My learned friend wishes you to suppose, it is the republication of something with a very innocent view: that the defendant meant it as a publication on the Jacobins, and it was impossible this publication could have any effect at all upon their minds, and consequently it could be no libel. But, instead of being addressed to the Jacobins, it was addressed to Mr. Peltier himself: is it not then to be supposed by the jury, that an effect was meant to be pro-

duced on the French government, by manifesting a disposition to libel their first magistrate, and to do him mischief? That is the object which is offensive to the law of this country.

But, whatever observations may be made on these two poems, what is to be said of the last publication, the translation of the speech of Lepidus from the Roman History, and applied to the history of the French people?—Can you conceive a more noxious, and a more offensive publication? It is written in a language calculated for its circulation through every corner of France, and its object is manifestly to vilify and defame the first magistrate of that country, not only in France, but throughout Europe. This seems to be the end and necessary consequence of this publication in this place: and if you view it in that light; and if you are satisfied that is the fair interpretation of it, there is no question of difficulty between us. We are both agreed as to the illegality of printing, and the illegality of publishing, libels against those with whom we are at peace: the only question then for you to decide is this, whether or not these publications, such as they are—whether these papers were or were not published, with an intention of vilifying the French consul? My friend tells you, if that is your judgment—he tells you, that if that was really the intention of the publication, that then the defendant is to be delivered up to your verdict, and that you cannot rescue him from the consequences; but if you are satisfied it was not published with any intention of vilifying and defaming the first consul of France, but that it was written in the spirit of history, and that it comes under the description of free discussion. If you can, in your consciences, really believe that this comes fairly within the range of free discussion, or that it comes within the scope of historical privilege, then I do not ask your verdict; but if you are satisfied, in point of fact, that it was published with the libellous intention I impute to it, do not be driven from your purpose by any theoretical or declamatory address, or be led to apprehend you are doing wrong, by acting on the clear principles of public law, in a case fairly brought before you. It is your province, and your duty, to act on the question before you, on true and clear principles, and not to look to those cases which are to follow. It will be time enough to stir up an English jury, when some unprecedented proceedings take place, and it will be time enough then that the address of my friend should be repeated to them. And if that period is about to approach, I have only to lament, in common with you all, in common with every man who has heard that speech, that that most eloquent, most able, most irresistible address, which has been applied to such a case as this, was not reserved for that occasion to which it might with more propriety have been applied.

SUMMING-UP.

Lord Ellenborough.—Gentlemen of the Jury; The case on the part both of the prosecutor and of the defendant being now closed, it remains for me, in obedience to the injunctions of the law, to give you my opinion on the whole matter in issue, in the same manner as I am required to do in all other criminal cases.

The matter in issue includes three things: first, the fact of publication; secondly, the truth of the allegations in the record; and, thirdly, the nature, quality, and tendency of the papers themselves.

Gentlemen, this information is filed against the defendant, for several passages that have been selected from the first and third numbers of the publication called the *Ambigu*. Several of these papers have been read, first in the French language, and then in an English translation, the faithfulness of which does not appear to be materially impeached.

As to the first thing, the fact of publication, that seems to be proved by the evidence of Mr. Deboffe, who published, and acted under the orders of Mr. Peltier, the defendant. It is unnecessary to detail the particulars, because that he was the publisher under the orders of Mr. Peltier, does not seem to be matter of contest, and therefore he is liable, if these are libellous publications. That Napoleon Buonaparté was the chief magistrate and first consul of France is admitted. And that the relations of peace and friendship subsist between us and the French republic, and did so at the time of these publications, is also admitted; and, indeed, they were capable of easy proof, if they had not been admitted. Their notoriety seems to render the actual proof very unnecessary.

The next, and only remaining material point for your consideration is, the nature and quality of the publications themselves. It has been attempted by the learned counsel for the defendant to represent them as ironical and satirical papers, written as against some particular factions in France, and not immediately directed against the character and person of the first magistrate of that country. It will be for you to say, on the fullest consideration of all the circumstances of this case, whether you are not satisfied that these papers do contain matter reviling and highly reflecting on that considerable magistrate, and hold out a direct incitement and encouragement to assassinate his person.

Gentlemen, it is my duty to state to you, that every publication which has a tendency to promote public mischief, whether by causing irritation in the minds of the subjects of this realm, that may induce them to commit a breach of the public peace, or whether it may be more public and specific, and extending to the morals, the religion, or magistracy of the country—these are all cases of libel. But more particularly, as in the present case,

by defaming the persons and characters of magistrates and others in high and eminent situations of power and dignity in other countries, inconsistent with amity and friendship, expressed in such terms and such a manner as to interrupt the friendly relations between the two countries—every such publication is what the law calls a libel. Cases of this sort have occurred within all our memories. My lord George Gordon published a libel on the person and character of the queen of France; and another person published a libel on the late emperor Paul, in both of which cases there were prosecutions. In the first case there was a conviction and punishment followed. The other case went the length of a conviction and punishment also,* and in respect to the legal effect of both these prosecutions, I am not aware it was ever judicially questioned. And therefore I lay it down as law, that any publication which tends to degrade, revile, and defame persons in considerable situations of power and dignity in foreign countries may be taken to be and treated as a libel, and particularly where it has a tendency to interrupt the pacific relations between the two countries. If the publication contains a plain and manifest incitement and persuasion addressed to others to assassinate and destroy the persons of such magistrates, as the tendency of such a publication is to interrupt the harmony subsisting between two countries, the libel assumes a still more criminal complexion.

Now let us look at the ode which is attributed to Chenier. This is immediately prefaced by a declaration that he would collect all the materials he could employ on the edifice he was to raise to the glory of Buonaparté, such as should be suitable to his glory; so that his object seems to have been to libel the character of Buonaparté. It is not to be supposed these verses were written by Chenier. Such things often appear under feigned names; and it will be for you to say, whether these words do not import a direct incitement to the assassination of that magistrate?

“Oh! eternal disgrace of France! Cæsar, on the banks of the Rubicon has against him, in his quarrel, the Senate, Pompey, and Cato; and in the plains of Pharsalia, if fortune is unequal—if you must yield to the destinies, Rome, in this sad reverse, at least there remains to avenge you, a poinard among the last Romans.”

Now, does not that express a wish, on the part of the person who writes this, that they (the people of France) would use the poinard against the supposed oppressor and usurper of their government, the same weapon which had been used with effect against Cæsar, the usurper of the Roman government?

And, in another part of this publication, he says, “As for me, far from envying his lot, let him name, I consent to it, his worthy successor; carried on the shield let him be

“elected emperor. Finally (and Romulus recalls the thing to mind), I wish, that on the morrow he may have his apotheosis. Amen.”

This is a direct wish, on the part of the publisher of this work, that if Buonaparté should be elected emperor of that country of which he then held the government, his death might be instantaneous—or that his destruction might follow on the next day. Every body knows the supposed story of Romulus. He disappeared; and his death was supposed to be the effect of assassination. Now this seems to be incapable of equivocation:—if the words were equivocal, and could bear two constructions, I should advise you to adopt the mildest; but if these words can bear this sense and this only, we cannot trifle with our duty; we cannot invent or feign a signification or import, which the fair sense of the words does not suggest.

Gentlemen, upon the whole matter, on the best consideration I have been able to give to these different publications, it appears to me, that the direct and indirect aim and tendency of them (notwithstanding the very ingenious gloss, and colour, attempted to be given them by the eloquence almost unparalleled, which defended them), was to degrade and vilify, to render odious and contemptible, the person of the First Consul, in the estimation of the people of this country and of France—especially in the estimation of the people of France,—and likewise to excite to his assassination and destruction.—That appearing to be the immediate and direct tendency of these publications, I cannot, in the correct discharge of my duty, do otherwise than state, that these publications having such a tendency, in respect of a foreign magistrate, and being published within this country, and the consequence of such publications having a direct tendency to interrupt and destroy the peace and amity between the two countries, are, in point of law, libels. And in the correct discharge of your duty, I am sure no memory of past, or expectation of future injury, will warp you from the straight and even course of justice; but your verdict will mark with reprobation all projects of assassination and murder. Consider likewise, how dangerous projects of this sort may be, if not discountenanced, and discouraged in this country; they may be retaliated on the head of all those whose safety is most dear to us.

Gentlemen, I trust your verdict will strengthen the relations by which the interests of this country are connected with those of France, and that it will illustrate and justify in every quarter of the world the conviction, that has been long and universally entertained, of the unsullied purity of British judicature, and of the impartiality by which their decisions are uniformly governed.

Gentlemen, the matter is with you, and you will give that verdict, which your own conscience sanctions.

* See the Case, vol. 27, p. 642.

The Jury, without retiring from their box, immediately returned a verdict of—
GUILTY.

War between Great Britain and France being renewed soon after this trial, the defendant was never called upon to receive judgment.

652. The Trial of THOMAS KINCH and THOMAS WATSON, with the Proceedings against WILLIAM SHIELDS for the Murder of THOMAS RYAN; before the Court holden at the Sessions House, Green Street, Dublin, under a Commission of Oyer and Terminer, on Friday, November 5th: 43 GEORGE III. A. D. 1802.

*Sessions House, Green-street, Wednesday,
Nov. 3, 1802.*

Present.—Mr. Baron GEORGE; Mr. Justice FINUCANE.

This day the prisoners were brought up and arraigned on the following

INDICTMENT:

County of Dublin } THE Jurors for our lord
to wit } the king upon their oath
present that William Shields late of Kevin's-
street in the county of Dublin nailer Thomas
Kinch late of Cathedral-lane in said county of
Dublin carpenter and Thomas Watson of Ca-
thedral lane in said county of Dublin yeo-
man not having the fear of God before their
eyes but being moved and seduced by the in-
stigation of the devil on the 14th day of July
in the 42nd year of the reign of our sovereign
lord George the third by the grace of God of
the united kingdom of Great Britain and
Ireland king defender of the faith and so
forth with force and arms and so forth at
Kevin's-street in the county of Dublin in and
upon Thomas Ryan in the peace of God and
our said lord the king then and there being
wilfully feloniously and of their malice pre-
pensed did make an assault and that the said
William Shields a certain gun of the value of
10s then and there loaded and charged with
gun-powder and a leaden ball which gun he
the said William Shields in both his hands
then and there had and held to against and
upon the said Thomas Ryan then and there
feloniously wilfully and of his malice pre-
pensed did shoot and discharge and that the
said William Shields with the leaden ball
aforesaid out of the gun aforesaid then and
there by force of the gun powder shot and
sent forth as aforesaid the said Thomas Ryan
in and upon the back part of the head of him
the said Thomas Ryan then and there with
the leaden ball aforesaid out of the gun aforesaid
by the said William Shields so as aforesaid
shot discharged and sent forth feloniously
wilfully and of his malice prepensed did

strike penetrate and wound giving unto the
said Thomas Ryan then and there with the
leaden ball aforesaid so as aforesaid shot dis-
charged and sent forth out of the gun aforesaid
by the said William Shields in and upon the
back part of the head of him the said
Thomas Ryan one mortal wound of the depth
of four inches and of the breadth of half an
inch of which said mortal wound the aforesaid
Thomas Ryan then and there instantly
died and that the aforesaid Thomas Kinch
and Thomas Watson then and there feloniously
wilfully and of their malice prepensed
were present abetting procuring helping main-
taining and counselling the said William
Shields the felony and murder aforesaid in
manner and form aforesaid done and com-
mitted to do and commit and so the jurors
aforesaid do say that the said William Shields
Thomas Kinch and Thomas Watson him the
said Thomas Ryan then and there in manner
and form aforesaid feloniously wilfully and of
their malice prepensed did kill and murder
against the peace of our said lord the king
his crown and dignity and contrary to the
form of the statute in that case made and
provided

To this indictment the Prisoners severally
pleaded *Not Guilty*.

Friday, Nov. 5.

Present.—The hon. Mr. Baron GEORGE; the
hon. Mr. Justice FINUCANE.

This day the following Jury were sworn for
the trial of the prisoners:

William Gibton,	John Miller,
William Davis,	Robert Pouden,
William Bigger,	Seacomb Mason,
James Warren,	Bennett Dugdale,
William Wilkinson,	William Bunn,
Thomas Harricks,	John Grimwood.

Counsel for the Crown.

Mr. Mac Nally.
Mr. Jonas Greene.
Mr. Ridgeway.

Mr. Campbell.

Mr. Bethel.

Agents.—Mr. Thomas Kemmis, Crown Solicitor.

Mr. Leonard Mac Nally.

Counsel for the Prisoners.

Mr. Egan.

Mr. O'Driscoll.

Agent.—Mr. R. Newell.

Mr. Bethel stated the substance of the indictment.

Mr. Mac Nally.—My Lords, and Gentlemen of the Jury; The duty I have to fulfil, as leading counsel for the crown, I should consider very arduous indeed, if I were not relieved by the satisfaction I feel at the attendance of the counsel for the prisoners at the bar, whose knowledge and experience can give them every assistance; and I am happy to see a gentleman* of the bar, who, in his judicial situation, has been well conversant in the law on the subject of this prosecution; and if I could be led into any expressions that would make an unfavourable impression against the prisoners, through warmth, he would restrain it, or if I should err on the law on this subject, he would set me right.

Gentlemen of the jury, you have heard the indictment stated, and you are possessed of two facts; the first is, that the prisoner Shields stands charged with having individually committed the murder mentioned in the indictment, and that the other persons are indicted for aiding, assisting, counselling, abetting, and comforting the prisoner William Shields in committing that murder; and I think it necessary to apprise you, that if it shall appear to you in evidence that Shields was not the person who actually inflicted the wound which was the cause of the death of the man alleged to be murdered, but that it was one of the other prisoners at the bar, and that he was aiding and assisting in doing it—if you shall believe that the homicide committed amounts to the crime of murder, then the prisoner will be in the situation of a principal in the second degree; and this ought not to have any influence on your verdict, gentlemen of the jury, for the law supposes all who are concerned in the commission of the crime of murder, equally guilty;—the person who pulls the trigger, and they who are present, advising and counselling him to do it, are all united in the commission of that one fact.

Gentlemen, the evidence in this case will be very short, and will consist of two species; the first is what is called in law malice implied, and will consist of facts which I will state to you; the second, which amounts to compleat evidence of the commission of the

crime, malice express, will be maintained by evidence of expressions made use of by the prisoners, declaring their intention of committing homicide,—I will not say murder, that is for you to judge.

Gentlemen, I will not state to you the words;—words may be altered by the emphasis made use of in expressing them;—they may be altered by the manner of speaking them; I will leave it to the persons who heard the words to tell them, and then it will be for you to judge, whether they amount to express malice. I will not take up your time in telling you what the punishment of murder is;—it was always by the common and statute law of the land, punished by death: and, gentlemen, I sincerely hope that your verdict will acquit the prisoners, and that they may stand acquitted both in the eyes of the law and of God. But, gentlemen, I will to the utmost of my professional abilities exert myself to investigate this business, and I trust that your verdict will be such as I have a right to expect from gentlemen of your respectability and character.

Gentlemen, I am instructed to tell you, that Thomas Ryan, the unfortunate man who was killed, was a man of the most innocent and inoffensive life and character; and that a single instance of his having acted in any manner that could impeach his loyalty or private character could not be adduced; he was in the service of alderman Stamer; and his being in that service would establish his good character, for the respectability of alderman Stamer is so well known, that it will be universally allowed that he must have been a man of good character, or he would not have been in that situation.

Gentlemen, I beg leave to remind you, that the day on which this unfortunate affair happened was the 14th of July, the anniversary of the French Revolution.

Mr. Egan.—My lords, before the statement shall be gone into, I beg that the witnesses on both sides may be put out of court.

Court.—Then you must exchange lists.

Lists of the witnesses were accordingly exchanged.

Mr. Mac Nally.—Gentlemen of the Jury. I was going to state to you the facts which are the foundation of the present prosecution; and in doing so I shall not trouble you with the minutiae of the business, and shall only mention the leading facts; the collateral points of the evidence you can better hear from the mouths of the witnesses themselves. I was also going to mention to you that on the anniversary of the French Revolution, which is a striking era in the history of Europe, a fire was lighted facing the house of a Mr. Seagrave, in Kevin's-street, and I believe, and am willing to admit, that the fire was lighted not by persons friendly to the constitution, not by friends to the present excellent system of go-

* JOHN EGAN, esq. Chairman of the County of Dublin Sessions.

vernment, or by good and loyal subjects of his majesty. But, gentlemen, I am also instructed to state, that no offence whatever, no breach of the peace, or riot, was committed, except the fighting of that fire; and I am also instructed to tell you, that on the evening of the 14th day of July, the prisoner, William Shield, appeared, armed with a musket, and was speedily joined not only by the prisoners at the bar, but by several other persons who were also armed. The unfortunate young man who was killed, had left his master a little before nine o'clock on that evening; he was passing through the street and stopped to see what was going forward. I shall not state the expressions that were used, but this man and his party came almost up to the fire, where there were a few men, some women, and boys peaceably standing; they proceeded with the greatest treachery; they marched under the shade of the Bishop's-wall, until they came to a corner almost opposite the fire, where there is an angle which must totally conceal them from the observation of the persons in the middle of the street. At that time, gentlemen, there was no riot or disturbance whatever, there was not even shouting, and the persons who were at the fire were rather assembled to see what had been done. Some person gave orders to fire. Three shots were fired: the expressions which I have before mentioned were made use of, and a fourth shot was fired, which unfortunately took effect, and shot Thomas Ryan, who was there standing at the fire, penetrated his brain, and he fell. Those expressions which I have before mentioned, I am instructed, gentlemen, to state, will be brought home to Shields. The place from which the shots were fired, was nearly opposite to the place where the men were standing; and, gentlemen, it will appear to you, that no attempt whatever was made by the prisoner Shields, or any of his party to disperse the crowd that were standing round the fire. They were standing there, gentlemen, without any notice, or without any knowledge, or even suspicion of what was plotting for their destruction. The first shots which were fired did not take effect, and a fourth shot was afterwards fired, by which Thomas Ryan was killed.

I will premise, gentlemen of the jury, that it will be said on the other side, "in this case there was a riotous mob assembled, and any man has a right to interfere for the quelling of a riot, or breach of the peace." I will not now enter into the law on this subject, but if any point of that kind should be made by the prisoner's counsel, I and my friends, I am convinced, are sufficiently prepared to answer it. Gentlemen of the Jury, if there is a felony committing, every man has as much right as if he were a constable with a warrant, to interfere and give his assistance to put a stop to the commission of it; and I have heard this doctrine laid down and promulgated as the law of the land, by as great and

as learned a judge as ever sat upon a bench—lord Mansfield.—Gentlemen of the jury, bills of indictment have been found against the prisoners at the bar, and it is my duty to state to you, that notwithstanding those bills of indictment have been found against the prisoners, they are entitled by the law of the land to a presumption that they are innocent, until your verdict shall establish their guilt; and, gentlemen, I will state to you another proposition, that the greater the offence for which a man stands charged, so much the more ought the evidence to be clear and manifest. Gentlemen of the jury, you ought to give the prisoners the full benefit of the law, which is founded in justice and humanity, and "it is better that ninety and nine guilty persons should escape from punishment, than that one innocent man should suffer." I will state to you, gentlemen of the jury, that if it shall appear to you, from the evidence, that the man was shot by the prisoners at the bar, the law is imperative on them, and they must show under what circumstances they took away his life. Let them show that a magistrate was present: let them show that a felony was committing, and that they had a constable legally authorised to assist them: for no homicide can be justified, unless there can be some evidence of this kind adduced, or, unless it shall appear that a man is forced to commit it in defence of his own life. It is necessary, gentlemen, that the prisoners shall produce evidence of this nature, to distinguish the commission of homicide arising from necessity, or to distinguish the crime of manslaughter from the execution of a wanton and unnecessary act, if any such evidence can be produced; and if they shall fail in this necessary species of defence, the law will conclude that there is malice prepensed, and they must be convicted of a wilful murder.

I shall now, gentlemen, conclude, recommending you to a clear and impartial investigation of this business; and I trust, gentlemen, from the facts which will be laid before you, that you will give such a verdict as will shew the common people of this country, that they are not to take the law into their own hands, and that they are not to commit an outrage under pretence of vindicating the law: no man will be afraid to go abroad, no man will be afraid to stay at home, when he shall find judges unbiassed, unswayed by party or faction, symbols of candour and purity—when he shall find safety and protection in the law—and that if injured, he can obtain redress from a jury of his fellow-countrymen, who are not afraid to act with integrity and honour.

James Rorke, surgeon, sworn.—Examined by Mr. Greene.

I believe, sir, you are a surgeon?—I am, sir. Did you know Thomas Ryan?—No, sir.

Did you ever see him?—I did; I saw him lying dead in Kevin's-street, near the Crane.

He was dead when you saw him?—Yes, sir.

Do you know, sir, how he came by his death?—It appeared, by a contusion in his head, and the lacerated appearance of it, that he died in consequence of receiving a gunshot wound; or a wound inflicted by means of some instrument charged with combustible matter, which appeared to have entered the fore part of his head, traversed the brain, and gone through the occiput.

Was the wound of such a nature as to cause his death?—It was, and I found his head in such a state, that I thought it unnecessary to remove the scalp.

Mr. Alderman *Stamer* sworn.—Examined by Mr. *Ridgeway*.

Did you know Thomas Ryan?—I did.

Had he been in your service, previous to his death?—He was in my service?—

Do you remember seeing him on the 14th day of July last?—I do, sir.

Can you recollect at what time he left your house on that evening?—A quarter after nine o'clock.

Had he been with you all the previous part of the evening?—I had sent him to Chapel-izod, and he had returned.

Was he sober?—He was, and he was as sober a man as ever I knew in my life.

James Morris sworn.—Examined by Mr. *Campbell*.

Did you know Thomas Ryan?—I reared him.

Is he living or dead?—He is dead at present.

Did you see him dead?—I did, sir.

Where was it you saw him?—In Kevin's-street.

Where did he appear to have been wounded?—In the forehead: he was lying on the broad of his back; he had this hat on the back of his head—[Witness had a hat in his hand]; and it appears as if a ball had gone in at one side and come out on the other.

Pray, my good man, was the person whom Mr. Rorke examined, the same man whom you saw lying dead?—He was; it was my step-son, Thomas Ryan.

Michael Johnston sworn.—Examined by Mr. *Greene*.

Pray, Johnston, do you remember the 14th of last July?—I do, very well, sir.

Where do you live?—At No. 15, Kevin's-street.

Were you in Kevin's-street, on the evening of the 14th of July last?—I was; I threw myself upon the bed with my clothes on, about half after six o'clock; and afterwards I heard a great noise and shouting, and I got up and heard shouting to the left hand, and I saw nine or ten persons together, who had four firelocks.

Court.—They were on your left hand side?—They were.

Mr. *Greene*.—Did you see those persons

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make any use of those firelocks which you saw with them?—I did; I saw William Shields among the party, and he cried out, "Come, boys, by the Holy Ghost we will make a lane through these fellows at the Fountain."

Had Shields at that time any thing in his hand?—He had a firelock.

Now, you say you saw a number of persons at the Fountain; tell the Court and the jury what happened there, after Shields made use of these expressions?

Court.—What kind of people were they that were at the Fountain?—I ran up there, and I could see but two or three men, and some women and children.

Mr. *Greene*.—Now, upon hearing that expression from Shields, did you say any thing?—When I heard it, I immediately took up my hat which was by the window and ran out, and Shields's party pursued me. I got up to the Fountain and clapped my hands, and told the people that there would be murder, if they did not immediately go away.

When you gave the warning to the people at the Fountain, where were the persons who had the muskets?—They were at the cooper's, nearly opposite to the Fountain; and I heard a voice, crying, "fire, fire, fire," and upon that three shots were fired.

Now, how soon after you went up to the Fountain was it, that you heard the voice crying fire?—The very moment after.

Now, do you know, of your own knowledge, what happened after this?—When I desired the people to go away, I made my escape over to Mr. Segrave's house, and stood up against the wall in order to save myself; and I heard a man's voice who cried out to Shields, "don't you fire, or there will be murder."

Now, did you hear Shields make any reply?—Yes, I did; I heard Shields crying out with a hoarse voice, "by the Holy Ghost I will fire;" and a shot was fired, and immediately the man fell at my right-hand side.

Who was the man?—I never saw him before.

What was his name?—I think I have heard it was Thomas Morris.

Why, that was the name of the last witness?—I did not know him at all, but I believe his step-father's name was Morris.

Were you present when the coroner's inquest sat on the body?—I was.

Was the man who was shot on that night, the same man upon whom the coroner's inquest was held?—He was.

Do you see Shields in court?—I do; there he is.

Do you see any other of his party in court?—No, I do not. I took notice of him in particular, for he showed himself the busiest.

Michael Johnston cross-examined by Mr. *Egan*.

Captain Johnston, how long is it since you left the army?—About eight years.

Pray, how did you get rid of your commission?—My master paid five guineas for my release.

Where were you born?—In Crumlin.

What countryman are you stated to be in your discharge?—I cannot write or read.

Was it not before the Union that you were discharged?—It was.

Then you were not an Englishman by act of parliament? You were not described as an Englishman in the discharge?—No, I was not.

Now, by the virtue of your oath, do you know of any damage having been done to Shields's house on that night, or the night before?—I did not see it.

Now, by the virtue of your oath, do not you believe that Shields's house, and several other houses were attacked and battered, and the windows broken by the mob?—I never heard it, nor I do not believe it.

Did you see any thing done to his house after the 14th?—I did not.

And you never heard of his windows being broken on that night, or at any time preceding?—I did not.

I cannot ask you whether you threw them yourself, that would not be fair; but I want to know, if you ever heard that there were stones thrown at Shields's house which broke his windows?—No.

Now, by virtue of your oath, have you never heard that the door of his house was broken, and that he was obliged to have it nailed up with large car-nails to keep out the mob?—No, I never did.

Now, I ask you, is the 12th of July any remarkable day?—Yes, it is a rejoicing day.

What is the rejoicing for?—For king William's birth-day.

What! the 12th of July?—Yes.

Then I find it is no great matter on what day we come into the world, or on what day we go out of it; you are quite sure however that it was a rejoicing day?—Yes, it was.

Now, have you not heard, and do you not believe, that the houses of many Protestants were abused and entered on that day by an armed mob?—I did not hear it.

Do you believe it?—No, I do not.

Do you live near Shields's house?—I live in the neighbourhood.

Now, I give you from the 12th to the 14th;—do you believe there was damage done to any house within that time?—I cannot tell; I believe there was a window broken.

Ha! I knew I should have it out at last. Now, whose house did the windows belong to?—I cannot tell.

Now, when you say a window was broken, do you mean an entire window, or one pane of glass?—Only a pane of glass.

Do you know of any other damage being done on the 10th, 11th, 12th, 13th, or 14th?—I do not.

Do you remember hearing of any on the 15th, the day the man was brought home

dead?—Yes, I saw some boys throwing stones at the windows in the street.

What do you mean by boys? how old were they?—Lads about eight years old.

Mr. Egan.—Yes yes, they were fine lads of that age no doubt.

One of the Jurors.—When you saw the men armed, was it 11 o'clock?—No, it was between 10 and 11 o'clock.

Where do you live?—Just by Cathedral-lane.

Mr. Egan.—Johnston, I forgot to ask you one question; was it a dark or light night?—It was a light night.

What distance were you from Shields's party, when you first saw them?—About 15 or 20 yards.

How far was it from the Fountain?—I cannot tell.

Mr. Mac Nally.—Now, my friend, how high is your lodging from the ground?—It is on the first floor.

And do you mean to say, that they were 15 or 20 yards to the left hand?—I do.

Then they were 15 or 20 yards farther from the Fountain than you?—They were.

Mr. Egan.—I think I heard you say, that you went to bed at half past six o'clock on that evening?—Yes, sir.

I suppose you dined before you went to bed?—I did.

At what hour?—At the same time I usually do.

Now sir, as I have not the honour of knowing at what hour you usually go to dinner, I beg you will be so good as to inform me of it?—At two o'clock.

Did you drink any thing after your dinner?—Yes, I did.

How much did you drink?—I cannot tell.

What kind of liquor was it?—It was no kind of liquor; it was nothing but malt.

Had you any company to dinner?—I had not.

Cannot you give a guess as to the quantity of malt you drank? Was it a gallon?—No.

Three quarts?—No.

Two quarts?—No.

Well, was it three pints?—No, sir.

How much then do you think yourself?—About a quart; but I cannot say exactly, for in the place where I went one or two people might have asked me to drink.

Had you any conversation with Shields about tattering his house, on any day preceding the 14th?—No, I had not.

Nothing passed between you and him relative to the tattering of his house?—None at all; but I saw him at Mr. Ivory's door, where there was a pitch barrel.

Now, were you not yourself charged with being one of the party that tattered Shields's house?—I was not.

One of the Jurors.—You said you heard Shields say, that he would make a lane through the crowd; do you know what he meant by that expression?

Mr. O'Driscoll.—That, gentlemen of the jury, is an inference for you to draw.

Juror.—Do you live on the same side with the Archbishop's palace, or on Cathedral-lane side?—

On which side of Cathedral-lane is it, towards the Coombe, or near the Fountain?—Near the Fountain.

You say Shields's party were 15 or 20 yards from you on the left-hand side, when you first saw them?—I did.

Then they must have been at a considerable distance from the Fountain?—They were.

Another Juror.—You saw the man fall?—I did, he fell in a little heap of dust.

Did you see Shields presenting the musket?—I did not.

Was the fire blazing up at that time?—It was lighting, but not very bright.

Mr. Egan.—Pray what house does Segrave keep?—A tobacco shop.

How came you to go there?—To hide myself.

Had you met there at any time before?—No, never in my life.

Does he sell liquor?—No.

Mr. Mac Nally.—I wish this witness may not be sent out to the place where the other witnesses are waiting.

Pray, my good fellow, did you not say, that there was no noise or disturbance round the fire when you went up to it?—I saw none.

Did you hear any?—Sure, it was the noise that wakened me out of my sleep.

Juror.—Did Shields and the other persons move from the place where they were standing, on your coming out of the house?—They did. When they saw me, they pursued me, and I ran away.

Did they pursue you up Kevin's-street?—I cannot tell how far.

Where were they standing before they fired the shots?—At the corner by the Bishop's wall.

In the angle?—Yes.

Andrew Mac Manus sworn.—Examined by Mr. Mac Nally.

Where do you live?—In Kevin's-street, No. 52.

Were you at home on the evening of the 14th of July?—I was.

Did you see the transactions at the fire that night?—I did.

What hour do you suppose it to be when you first saw the bonfire?—I believe it was after eight o'clock.

Did you go up to it yourself?—I did.

At what hour?—About that time.

Do you know any of the prisoners at the bar?—I know that man there [witness pointed to William Shields.]

How long did you remain there?—I went to Patrick-street about some business, and afterwards came back.

What hour was it when you came back?—I cannot tell.

Did you receive any shots on that night?—Yes, I received several, one in the arm, one in the haunch, and one in the cheek.

Where were you standing at the time you received those shots?—Near Mr. Segrave's.

Did you hear any shots fired?—I did, three or four.

Now were all the shots which you heard, fired at one and the same time?—No, there were three fired at once, and one after; when I heard the first shots fired I threw myself down, thinking that the shots would not take me so low; but the fourth shot struck me.

What kind of lead was it that was fired?—It seemed to be swan drops, and some chewed lead.

Was there any other person injured by the last shot?—I did not see it, for I went immediately away for fear of being killed.

Did you hear any remarkable words relating to the firing of those shots?—I did not.

Now I ask you upon your oath, at the time the shots were fired, was there any riot or disturbance in the street?—No, sir.

What were the people doing at the fire?—They were standing quietly round it.

What description of people were they?—Women and boys, and a few men.

Had those people any arms?—They had not.

What business do you follow?—I am a smith.

Where do you work?—At Mr. Dalton's, coach-maker, in Dominick-street.

Did you see any armed persons in the street on that night?—No; I did not know any party.

Then your evidence is only this, that shots were fired across the street to the place where you were; and that you were wounded by the last of those shots. Did you know Thomas Ryan?—I never saw him, until I saw him dead.

When was that?—On the next day.

You cannot tell any thing about his being killed, except from hearsay?—No.

Then I shall not ask you any question about it. You do not know who fired the shots?—I do not.

Andrew Mac Manus cross-examined by Mr. O'Driscoll.

You live at No. 52, Kevin's-street?—Yes.

You go home to sleep there, I suppose, after you have done working in Dominick-street? Did you sleep there on the 11th, 12th, and 13th of July last?—Yes.

And on the 14th?—Yes.

Did you not hear that riots were going forward there on the 12th, 13th, and 14th?—I heard there were on the 12th at night.

Have you any reason to disbelieve it?—I have not.

Have you not heard, and do not you believe, that on the 12th of July last, many houses in Kevin's street were attacked by the mob?—I believe there were.

Did you hear there were several houses attacked on the 15th?—I do not know.

I asked you, did you hear it?—I did not.

Did you hear that any windows were broken, or that any house was tattered?—I heard that there was on the 15th, the day after the man had been killed; and I heard that a Mr. Boyd was near being shot out of a window.

Did you hear of any other act of violence on any of those days, or see any mob assembled?—I heard a child was wounded by a shot fired out of a window, and I saw a crowd about the house some time in the month of July last.

Pray, my good fellow, did you know whether the people at the bonfire had any arms?—I did not see any with them.

Who were these?—Women, boys and children, and some men.

Now do not you believe that stones were thrown at Shields's house, by the people that you mentioned just now?—I cannot tell.

Cannot you form a belief?—I cannot.

Do you know Michael Johnston, who was here a little while ago?—No, only by seeing him.

Then you never talked this business over with him, and asked him what he was to say about this business?—On my oath I never talked to him upon the subject.

Now do not you believe that he was charged with being among the mob?—I do not believe it.

Did you hear that he was charged with it?—No, I did not.

Did you ever hear that Shields was obliged to quit his house that night?—No, I never did until after the damage was done, after the killing of the man.

Did you never hear that any attack was made upon Shields's house until after the man was killed?—No, I never heard it.

Do you believe it?—No, I do not.

Pray, sir, did you see any ornaments about the Fountain?—Yes, I saw a few green branches stuck upon the Fountain.

Now, were not the green branches stuck up by way of a Tree of Liberty?—I do not know what they were meant for.

And what was the bonfire put there for? Was it not because it was the 14th of July, the anniversary of the French revolution?—I cannot tell; I was not at all concerned in the bonfire.

And yet, sir, you were so fond of the sport, that after going to Patrick-street you returned back again? Did you hear the rejoicing was for the battle of Aughrim?—No.

Now, by virtue of your oath, did you not hear that it was to celebrate the anniversary of the French revolution?—Yes, I did hear it.

Was there not shouting?—There was.

Now, I ask you on your oath, if you did not hear such expressions made use of, as "Bloody Orangemen," and "the Land of Liberty?—I

did. I heard a fish woman of the name of Nell May, mentioning something about that.

Mr. O'Driscoll.—Fools that ye are, the greatest slave in your country is free'r than the first man in that boasted land of liberty.

Bartholomew Ward sworn.—Examined by Mr. Ridgeway.

Do you recollect the 14th of July?—I do.

Were you in Kevin's-street on the evening of that day?—I was.

Do you recollect a bonfire being lighted on that night?—I do.

What time were you there?—About nine o'clock.

What brought you there?—I was at Mr. Doyle's in Kevin's-street, at the corner of Bride-street.

How far is it from Mr. Segrave's house?—It is opposite to it.

What business had you at Mr. Doyle's house?—I was employed by him to make some curtain-rods for his tap-room.

Did you observe any thing remarkable near Mr. Doyle's house?—Yes: I was coming out of Mr. Doyle's, and I saw Mr. Shields, and five or six men along with him, between Mr. Doyle's house and the Crane.

Court.—What hour was this?—About ten, or half after ten o'clock.

Mr. Ridgeway.—Had you known Mr. Shield's before that time?—Yes, I knew him perfectly well; I lived in the same neighbourhood with him.

Had he arms?—He had a gun on his shoulder, a belt round him, and cartouche-box.

Did you see arms with any of the other persons who were with him?—Yes; all who were with him had arms. I was a little daunted when I saw men coming up armed; I saw Mr. Shields signalize himself by stepping forward before any of the rest.

What did Shields then say?—"Come by the Holy Ghost boys, fire." I immediately turned back into Mr. Doyle's shop, and shut the bottom hatch? Mr. Doyle's waiter shut the top one, and at that instant the guns went off this way—[here the witness clapped his hands three or four times.]

How many shots were fired?—I believe five shots. I heard some one cry out "that a man was murdered;" and I went over and saw the man lying dead.

Was this after you heard those expressions made use of by Shields?—Yes, it was.

Did you know the unfortunate young man who was killed?—Upon my oath, I never saw him before that night.

Do you know his name?—No, I do not.

Do you know what persons were at the Fountain?—I saw a parcel of women and children as I went to Doyle's.

Did you see any riot or tumult?—There was no riot at all.

Now, after this, did you go in pursuit of any person?—Yes.

Whose house did you go to first?—To Shields's.

Did you know where he lived?—Yes, remarkably well.

Did you find him?—No, he was not there.

Did you see him after you had come out of Doyle's?—No, when we could not find Shields, we went to Kinch's house.

Turn to the bar, and point out Kinch?—There he is.

Did you get him?—Yes, we got him.

Did you get Shields afterwards?—Yes, we got him shortly after.

Did you say any thing to Kinch, when you took him?—We did not say any thing to him, but immediately on taking him we carried him to the watch house and left him there.

Did you get any arms in his house?—I believe there was a sword.

Bartholomew Ward cross-examined by *Mr. Egan*.

Did you ever see *Mr. Dunn*?—I did, sir.

Pray, sir, did you ever see *Mr. Gregg*?—I did, sir.

I believe they are gentlemen that keep open houses in this town. May I ask you how long this gentleman [*Mr. Dunn*] entertained you with his accustomed hospitality?—I was with him, I believe, for six months. It was on account of the rebellion that the business was delayed and not brought before the Court, and I was obliged to remain in custody.

For what crime was it that you were kept so long in custody? whatever crime it was I am certain from the honesty of your countenance, that you must have been charged very unjustly?—It was only for being in my brother's room.

Surely, you would not be confined for that only? You must have been charged, however falsely, with the commission of some crime? come, what was it?—Two plates were found in my brother's room.

What! China plates?—No, copper plates.

O! now I understand you, my honest fellow; you wished to improve in your handwriting, and so you got a set of copper plates?—No.

What was it then? were you found guilty for any thing?—Yes for being found in my brother's room.

What crime did they call it?—Something about forgery, I believe, you may make what you please of it.

Then I have been under a mistake all this while. I suppose, the plates were for forging bank notes?—They were, but I knew nothing of them.

Oh, I am sure you did not; but how long were you ordered to be confined?—For six months.

And how long were you with *Mr. Gregg*?—For six months also.

Then you were afraid Green-street would be jealous of Kilmainham, and so came to pay a visit to your friend *Mr. Gregg*.

Mr. Mac Nally.—He considered them as his town and country residence.

Mr. Egan.—And pray, sir, were you ever a student in the university of Trim. Were you ever confined in Trim gaol?—I was.

And pray, sir, were you not also brought before Alderman Rose, a magistrate of the city of Dublin?—Yes, I was, for an iron grate which was exposed to public sale, and I bought it, and worked it up for my own use.

And what did they charge you with?—With receiving stolen goods.

My God, who would imagine that any one would suspect you; your honest countenance is a full refutation to all those malicious calumnies. And pray, what became of this business?—I was let go, and there was no more about it.

Oh! it was a matter of course: the alderman saw your innocence in your looks. And pray, sir, were you taken up on the 13th of July last?—I was.

What for?—Why, sir, *Mr. Shields* swore an assault against me.

When was it?—I believe it was on the 13th of July last.

Was it for an assault on his house, or on his person?—It was on his person. I will tell you all about it.

You need not trouble yourself; were you taken?—I went voluntarily.

Who bid you do so?—My brother was taken first, and I went to bail him when he sent for me.

I suppose you had not any suspicion that you were sworn against yourself?—No, I had not.

What magistrate did you go before?—*Mr. Greenshields*.

And then, I suppose, *Mr. Greenshields* would not let you go?—I was soon let go, for it did not take up any time.

I should suppose not indeed, it was a matter of course; and pray now, did you not go to *Shields's* house the very instant you heard of the murder?—Yes, when I saw some of the people looking for him.

And then, I suppose, it occurred to you, that you had a fine opportunity of complimenting *Mr. Shields* for his civility on the day before; or was it a mere abstract love of justice that made you so anxious to have him apprehended? Now, be so good as to inform me, if any damage was done to *Shields's* house or any other houses in the neighbourhood, by the mob, either on the 12th, 13th, or 14th day of July last?—I did not see it or any other house damaged. I believe on the day when the inquest was held upon the deceased man, there was some mischief done.

I am asking you on your oath, if any house in that neighbourhood was tattered or abused on the 12th, 13th, or 14th?—I believe there were some children throwing stones at the windows of one *Billy Tate*.

* The county gaoler.

† The city gaoler.

William Lawlor sworn.—Examined by Mr. Campbell.

Where do you live?—At No. 52, Kevin's street.

What business do you follow?—I am a Bricklayer.

Do you remember the 14th of July?—I do.

Look at the bar, and see if there is any person there whom you saw on that night?—I see Thomas Kinch, William Shields, and Thomas Watson.

Where did you see them on that night?—I saw them when I was coming up Kevin's street, from towards William Smith's house.

Were they armed, and with what?—With muskets.

Did they stop in any part of the street?—Yes, at Peter Murray's house.

Did you see them do any thing under the windows of Mr. Murray's house?—I saw them in the act of priming and loading.

Did the prisoner Shields say any thing?—I heard him call Peter Murray "a cowardly rascal, and to come down."

After that expression, did you see Peter Murray do any thing?—I saw him advance towards the bonfire, and afterwards stop at the corner of Cathedral-lane for a minute or two, and then I heard the prisoner Shields, cry out "fire! fire!" and three or four shots were fired.

Did any thing farther happen?—Yes, the prisoner Shields roared out with a loud voice, "retreat and load;" and I heard a voice cry out "dont! dont!"

After that, did you hear another shot fired?—I did.

Do you know who fired that shot?—I cannot tell; but I saw the prisoner Shields after he roared out to retreat and load, wrest a second piece from a girl of the neighbourhood, and advance towards the bonfire some paces.

Did you see him fire a shot?—No; for I went home, I was afraid to stay; but I heard a shot fired.

Did you see any of the prisoners after?—No, I did not.

William Lawlor cross-examined by Mr. O'Driscoll.

Did you ever hear of a man of the name of Saxsmith, who was killed at the time Mr. Beresford was chaired?—I heard that there was a man killed; but I never heard his name.

Now, did you never hear that that man was to have been a principal witness for Shields?—I never did.

Did you never hear how he came by his death?—Never.

Did you never hear that Johnston, the little dapper fellow, from Dominick-street, was charged with it?—No.

Nor Bartholomew Ward?—No, never.

Did not you join in the rejoicing in Kevin's street?—I did not.

Nor roll pitch barrels towards the bonfire?—I did not see any pitch barrels; but I heard that there were some near Mr. Ivory's house.

Now I am sure it is not true; but did you never hear, that you yourself were talked of as one of the persons assisting in the riot?—I did not.

Do not you believe, that the people of Kevin's street were kept in a state of terror on the nights of the 13th and 14th of July last?—I cannot answer that question.

Cannot you form a belief?—I do believe it. [The witness here raised his voice, and made a noise by clapping his hand on his knee].

What kept them in terror?—Those persons being under arms, were looked upon as having a grudge to the street.

Is it Shields's party that were put in terror?—No, it was the respectable housekeeper's in the street who were kept in terror by Shields's party.

What time of the night was it when you heard Mr. Shields say, "you cowardly rascal are you afraid to come down?"—About ten o'clock at night.

Do you know what made him afraid to come down?—I do not know.

Now, on your oath, were not the houses of many peaceable inhabitants of the street attacked on the 12th, 13th, and 14th, by Shields's party?—I cannot tell I believe it was by a party of yeomen.

It is plain that Peter Murray did not wish to come down, or Shields would not have used the expressions you mentioned. Now, do not you believe, that it was on account of the riot in the street that he did not wish to come down?—I believe it was.

Do not you believe that the rejoicing was for the French revolution?—I believe it was.

Did you not see a little tree of liberty?—I did not.

Were there green branches?—There were, but I did not see them.

Was not the house of Peter Murray attacked on that night?—I heard it was.

Do you believe it?—I do.

Was it done by Shields's party?—Some one said it was by the other party, but I insisted that it was not; because I was looking out of the window, and must have seen it if it had been so.

Was the house of Shields attacked?—It was, the day after the man was killed.

Was that done by the yeomen?—It was done by the mob that followed the corps.

Did you not hear that the mob attacked the houses of many respectable persons?—I heard that Thomas and John Foot's houses were attacked.

Did you hear that a pistol was fired at Thomas Foot?—I did not.

You said you heard Shields say "retreat and load;" how near were you to him at that time?—I cannot say.

Are you not afraid of being indicted your-

self?—I am not; nor I never was the least afraid of it.

One of the Jurors.—Where were you when you heard Shields cry out, "retreat and load?"—I was at my own window.

Where was Shields standing at the time?—In the middle of the street, near a heap of stones at the Bishop's Gate.

Margaret Kearns sworn.—Examined by Mr. Greene.

Your name is Margaret Kearns?—Yes, sir. Where do you live?—At No. 2, Kevin's street.

Do you recollect the night of the 14th of July?—I do.

Now at what time did you see any thing of this transaction?—To the best of my recollection it was about half past ten o'clock.

Now, where were you at that time?—I was in my own room, at the window.

How many pair of stairs up?—One pair upwards.

In what part of Kevin's-street is your house situated?—Near Mr. Segrave's.

It is near the Fountain?—Nearly opposite.

Did you see any armed men coming up towards the Fountain?—I did.

Did you see any shots fired?—I did.

How many?—I believe in all five shots; and there was some minutes between the first and last shot.

Now do you know whether any person received an injury by the firing of those shots?—Not until the last shot.

Now, would you know any of the persons who were of the party?—I would.

See if any of them are in the court?—There are three of them.

Do you see the three men?—I do; the prisoners at the bar are three of the men who were of the party.

Mr. Egan.—Mention their names?—Mr. Watson, Mr. Kinch, and Mr. Shields.

How long have you known them?—Four or five years; we lived in the same street.

Mr. Greene.—What happened after the shots were fired? did you hear any expression made use of by any of the party?—Yes, Mr. Kinch said "Bloody end to you, Shields, you had like to shoot me." Mr. Shields was the last man that fired.

Margaret Kearns cross-examined by Mr. O'Driscoll.

Were you called to give evidence on the coroner's inquest?—No.

Did Shields advance before the rest and fire the shot?—He did.

And you say the man who was behind him, cried out, "Bloody end to you, you had like to shoot me." A very probable story, indeed. Were you acquainted with Johnston?—Yes.

And Mac Manus, the little Dominick-street man?—No.

I ask you, on your oath, if you ever spoke to any one about the evidence you were to

give to-day?—On my oath, I did not except to the agent for the prosecution.

On your oath, did you not put up white lilies or ribbands, on the day that the bonfire was lighted at the Fountain in Kevin's-street?—I did not.

Was not your husband turned out of a yeomanry corps on the false charge of having white lilies growing out of broken vessels at the outside of your house?—On my oath they were only the flowers which I always had, that I put outside of the windows, and there were no lilies among them.

Have the goodness to tell their lordships and the gentlemen of the jury, if you ever heard that many of the houses of the inhabitants were attacked either on the 12th, 13th, or 14th days of July last?—No, I never heard it.

Did you ever hear that the street was kept in terror, and that the whole neighbourhood was afraid of being murdered by the mob, on the night of the 14th of July?—No.

Well, then, was it by the "bloody orange-men"?—No, I never heard such an expression made use of.

Was not the mob very riotous on that night?—No, they made no riot; but I believe they were very much afraid of the yeomen.

Were there not green branches put upon the Fountain?—There was only a little bit of a branch upon the lamp, and the boys took it down.

Was your husband out on that night?—He was.

Was he charged with having a hand in the riot?—No.

Did you ever hear that Bartholomew Ward was charged with it? now, do not you believe that Bartholomew Ward is a very honest man?—I do.

Did you ever hear any thing to his disadvantage, or that he was taken up?—I did not.

You never heard that he was in Trim gaol?—No.

Nor that he was sentenced for forgery?—No.

Now, if any one told you that, would you believe it?—If I heard it from a person of credit, I might believe it.

One of the Jurors.—When Shields advanced before the rest, was he nearer to the Fountain than to the Bishop's palace?—No, sir, he was along side of the palace.

How near was Kinch to Shields?—He was not any great distance.

Was he nearer the palace, or farther advanced into the street?—Neither; he was on one side.

Could you hear distinctly at the distance between the place where the party were standing, and your lodging?—I could.

Mr. O'Driscoll.—Did you know a man of the name of Saxsmith?—No.

Did you not hear that a man was killed on the day Mr. Beresford was chaired?—I did.

And do not you believe that that man was to have been examined this day as a witness for the prisoners?—I do not know.

Was not the prisoner Watson taken up within a day or two?—I believe he was.

And do not you believe that he was taken up merely because he was to have been examined as a witness for Shields?—I never heard any such thing said.

Peter Mac Mahon sworn.—Examined by Mr. Bethel.

What is your profession?—A Protestant.

I mean what is your way of life?—I may say I am a soldier, I am on pay.

Did you ever receive a warrant to apprehend any one?—Yes.

From whom?—From Mr. Greenahields.

To apprehend whom?—The one I got from Mr. Greenahields was not to apprehend Shields.

Did you go in pursuit of Shields?—I did, I heard he went to Navan and I followed him, and I received a letter informing me that he had been taken and was in the gaol of Trim.

Did you see him in the gaol at any time?—I did; I said to a man of the name of Donnelly who was with me, "come we will go and see Shields, and Donnelly said"—

Mr. Mac Nally.—Any conversation you had when the prisoner was not present, is not evidence.

Mr. Bethel.—Had you any conversation with the prisoner Shields?—I had.

Tell the Court and the jury what that conversation was?—We were at the window of the gaol, and were going away,—and I was going to ask Shields if he had any commands to town, when he said to Donnelly, "your comrade has deceived me," and Donnelly said "it was not he, it was I; for little do you know that it was my cousin that you murdered."

Did Shields make any reply?—He said, "how can it be proved who murdered him, when three or four of us fired together."

Peter Mac Mahon cross-examined by Mr. O'Driscoll.

Do you know any thing of the transaction on the night of the 14th of July?—No, I was in bed.

Where do you live?—On the Cross-puddle.

Have you not heard, and do not you believe that on the 12th, 13th, or 14th days of July, the inhabitants were kept in a continual terror?—I always make it my business when there are riots to keep out of the streets.

Have you not heard that they were kept in terror?—There were riots in the streets.

Did you not hear that the houses of many of the inhabitants were battered with stones?—I heard that, on the 12th or 13th of July, some person fired into Mr. Doyle's house, and that a girl was wounded.

Do not you believe that on the 14th a riotous mob was assembled in the street?—I do.

Now upon the oath you have taken, do not you believe that the unfortunate temper of the mob was furious on the night of the 12th of July?—No.

Did you not hear it?—I am a stranger in the neighbourhood, and have no business with any of them, or they with me.

[Here the Evidence for the Prosecution closed.]

EVIDENCE FOR THE PRISONERS.

James Fraser sworn.—Examined by Mr. O'Driscoll.

Where do you live?—In Kevin's-street.

What situation of life are you in?—A pay-serjeant in the Dublin light company.

Do you remember the 14th of July last?—I do.

And the 11th and 13th?—Very well.

Did you see any thing remarkable?—I did: I saw a great mob in the street; and on the 13th, I heard them roaring out, "where are the bloody yeomen."

Now, to the best of your judgment, how many did you see that day assembled together?—Odds of an hundred.

Did you see them doing any thing?—I saw them beating the yeomen, wherever they could catch them.

By day or by night?—By day.

It is of the 13th we are speaking?—Yes.

Did you see them do any thing else?—Yes, I saw them chasing an old man on account of his being a Protestant, and there were odds of an hundred people running after him.

Did you see them doing any thing on the night of the 13th?—Yes, they were carrying a pole with green branches tied to the top of it, which they called the tree of liberty; and they offered ten pounds for the head of an Orange-man or a bloody heretic.

How many were assembled, at that time, to the best of your judgment?—Odds of an hundred.

Did you see them doing any damage to the houses?—Yes, I saw them breaking windows.

Where were you when you saw them?—At Mr. Smith's, who keeps a public-house; and I saw them destroy the windows of one house entirely.

Had they any arms?—They had.

What were they?—I saw swords; I saw stones; and I saw sticks and pokers.

Was there any thing else happened on that night?—Yes, I heard some shots fired; and I believe they were fired out of a house that they were breaking at the corner of the puddle.

Do you know whose house it was?—Mr. Foot's.

Pray, Sir, do you know a man of the name of Peter Murray?—I heard of him.

Was any thing done to his house?—His windows were broken.

What is he?—He is a yeoman.

What were his windows broken with?—With stones.

By whom?—By the mob.

Do you recollect to have seen any thing else done to his house?—I saw nothing but the breaking of the windows.

Did you see any thing particular on the 14th of July?—Yes very particular; I saw Kevin's-street crowded with people about 11 o'clock in the morning of the 14th; numbers of people went away, and came back about half past 4; and I saw them bringing pitch barrels and bundles of furze towards the fountain; and about dusk they set fire to the furze and pitch barrels, and in about five minutes there were odds of 500 people collected together; the Fountain was dressed with green ribbons and green boughs, and there was a great mob of people huzzaing round the fire.

Were the green branches taken down immediately?—They were.

Do you know a man of the name of Bat. Ward?—Yes.

Did you see him on that night?—Yes, I saw him at the head of the mob; and he had six more people under the arm.

Mr. Mac Nally.—Do you mean the man who was on the table?—I saw none, Sir.

Mr. O'Driscoll.—Did you see him doing any thing else?—No: only the mob following Ward, huzzaing and breaking windows, and calling out, "where are the yeomen now?"

Was it with stones they were breaking the windows?—Yes.

What kind of stones?—Different kinds of stones; I believe they were mostly stones of about four or five pounds weight.

Now, Sir, how many houses did you see them attack?—The first house I saw them attack was Shields's.

When was this?—About 20 minutes after 10 o'clock; they were at least 500 in number.

What arms had they?—Swords, caneswords, and broad-swords, and lumps of sticks, short and thick; and I saw men with stones in each hand, and as they were coming down the street they fired shots out of small arms.

James Frazer cross-examined by

Mr. Mac Nally.

Did you receive any injury that night?—Yes, a blow of a stone.

On what part of the body?—On the haunch.

Now, you are perfectly accurate as to the 14th; where were you on the 12th?—Every place that my business called me.

Then you were not particularly engaged on the 11th, 13th, 14th or 15th?—On the 14th I had nothing at all to do.

Was your house attacked?—It would be hard for it, for I have no house.

Do you know all the disloyal people in the neighbourhood?—No, I do not, I am not long at home, I was in the country.

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Do you know Mr. Doyle?—There are three or four Doyle's in the neighbourhood.

Do not you know a remarkably large shop with letters over it an inch and a half long, where tobacco is sold?—No.

Did you not hear that shots were fired into Mr. Doyle's shop?—No.

Do you know what religion Mr. Doyle is of?—I do not know any thing about him.

You never saw the corner of Bride-street?—Yes, I passed it by often.

On your oath, did you never see the sign that is over the door of the corner house?—No, I never saw it; I am only at home about 10 days.

Did you see the man, the poor man that was shot?—Yes, I saw him lying dead.

Did you see a man wounded?—No; I was standing at Cathedral-lane.

Did you hear any shots fired?—I heard shots fired by the mob.

Did you not hear three shots fired, and then a fourth shortly after?—I did hear shots.

Do not you believe that the four shots were fired by the mob, or by disloyal persons?—I do not know any thing about it. I heard that Shields fired the fourth shot.

Now, on your oath, do not you believe that Shields did fire it?—On my oath, I do not believe he did.

Did Shields fly through fear of being taken?—I believe he did.

What for?—I cannot tell.

Cannot you form a belief?—No.

You said, you saw an old yeoman followed by a number of persons, and you did not attempt to save him?—I said an old man.

You are a brave soldier, indeed, to see a poor old man attacked, and not endeavour to save him. Did you see any of the other prisoners on that night?—I did.

Which of them?—Kinch. I was in company with him from four o'clock until the man was killed.

When you said that the mob fired some shots, did you mean the people that had the green branches?—I did.

Did you see any man with a belt and cartouch-box?—I did not.

Where do you live?—Near Cathedral-lane.

Which side of the bonfire were you at, when the man was killed?—I was at the side where Ryan fell.

And Kinch was with you?—He was. I was standing at the corner of Cathedral-lane.

Did you go over to the Crane upon any occasion?—I did not.

What time was it that you were at Smith's house?—It was not on the 14th at all: it was on the 13th that I was at Smith's.

Were you near being shot?—No.

Did you hear any thing that was said at the Crane?—I did not.

Now, can you form a belief, whether it was the prisoner Shields that fired the shot by which the man was killed?—I cannot.

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Now consider seriously, and answer me truly, did you hear shots fired by both parties?—On my oath, I did.

Now who fired the first shots?—The mob.

Thomas Foote sworn.—Examined by Mr. Egan.

Do you remember the 14th of July?—I do.

Did you see any thing remarkable on that day?—I did. I saw a great mob coming down street and breaking the windows where I was.

Was there any bonfire?—There was.

Were there many of the inhabitants of the neighbourhood there?—I was too far from it.

Was the mob armed?—I suppose so, for they snapped a pistol at me as I was looking out at the window.

Whose windows did they break?—The windows of the house where I lodged.

Whose house was it?—Mr. Murray's.

Did you hear any shots fired on that night?—I did hear many on that night, but I can't tell what number.

I suppose you went away from the window when they snapped the pistol at you?—I did.

Did you return again to the window that night?—I did and saw the mob again.

Are you positive this was on the 14th?—It was.

Was it in Peter Murray's house that he snapped the pistol at you?—It was, I saw the mob running backwards and forwards, and I ran away when I saw them snap the pistol at me.

What religion are you of?—I am of the church of Ireland, as by law established.

There are two churches, my good friend; which of them is it that you belong to?—I am Protestant.

Thomas Foote cross-examined by Mr. Greene.

You live in the same house with Murray?—I do.

Was Murray at home?—No, not at that time.

You say you heard several shots fired, but cannot tell who fired them?—I cannot.

Can you tell how long after the mob broke the windows it was that you heard the shots fired?—No, for I am bothered, and I had not a watch or clock to look at the hour.

Was it an hour after?—It was.

Was it half an hour?—It was about half an hour after they snapped the pistol at me.

You retired, when they snapped the pistol at you?—I did.

Did you return again?—I did.

Now, when there was a riotous mob in the street, what was the reason that you returned again to run into danger?—Well, if I did run into danger, I went upon my knees and peeped over the sill of the window for fear I should be snapped at again.—I took care

that they should not snap at me again, for I just peeped over, and when I saw any of them looking up, I pop'd down my head.

What magistrate was it that you went before, on the next day, to give an account of this desperate attack?—I did not go before no magistrate; I never mind them things, not I.

You say you are nearly deaf; did you hear the report of the pistol?—No, for how could I hear the pistol when it did not go off and burned priming.

The Rev. Foster Archer sworn.—Examined by Mr. O'Driscoll.

You are a clergyman?—I am, sir.

Do you know William Shields?—I do Sir.

How long have you known him?—For fourteen years. I first knew him in Cork; he was an apprentice belonging to a charitable institution of which I was a governor. I afterwards, in Dublin, inquired concerning his progress in life, and I heard that he had advanced himself by his industry from the situation of a journeyman to that of a master miller. I have frequently seen him in his shop, and I always, at such times, saw him at work, and he seemed to be a hard-working industrious man, and I never heard any thing to his disadvantage until this transaction.

What is his general character?—That of an honest, quiet, and industrious man.

Daniel Fearon sworn.—Examined by Mr. O'Driscoll.*

Pray, sir, do you know Thomas Kinch, the prisoner at the bar?—I do.

How long have you known him?—Seven or eight years.

What has been his general conduct and character during that period?—He has been an honest, peaceable, loyal, and good subject.

Do you know Shields?—I do.

How long have you known him?—Since the commencement of the rebellion; he was under my command.

You are an officer of a yeomanry corps?—Yes, sir, Mr. Beresford's light infantry; I was in St. Sepulchre's corps before that.

Mr. Mac Nally.—You may go down, sir, there is no occasion to raise St. Sepulchre upon us.

[Here the Evidence for the Prisoners closed.]

Mr. Baron *George* charged the jury; he recapitulated the evidence of the different persons who had given their testimony, and remarked to the gentlemen of the jury, that under all the circumstances of the case, it evidently appeared, that Thomas Ryan, for the murder of whom the prisoner stood charged, was killed, and that he came by his

* This Witness had been on the Jury Panel, and challenged on the part of the Crown.—*Orig. Ed.*

death in consequence of his having received a gun shot wound ; that it was for their consideration, whether the prisoners at the bar were guilty of the murder of that man, or not ; and that it was also for their consideration, whether the cases of the prisoners admitted of any distinction whatever.

It had appeared in evidence, that on the evening of the 14th of July last, a number of evil disposed persons appeared in Kevin's-street ; that they lighted a fire at the Fountain and acted very improperly ; but, however culpable or criminal their conduct appeared to have been on that occasion, it could not justify any person in taking away the lives of those who were there assembled. They had heard from the testimony of several witnesses, who had appeared before them, that the prisoners had come down on that occasion near to the bonfire, armed with muskets ; and concurrent testimony appeared, that they fired several shots ; but the last shot appeared to have been the fatal act by which the deceased man, who was standing at the bonfire, lost his life ; and it had been sworn, that the prisoner Shields was the person who fired that shot. It was a very extraordinary circumstance, that of all the muskets only one should be the instrument by which any mischief was done ; and it seemed probable, that the other muskets were not loaded, or several other persons would have lost their lives, for there were a great number of persons round a fire. A witness had informed them, that he received several wounds with slugs or chewed shot ; and the gentlemen of the jury must have observed when he came upon the table, whether he had any appearance of a wound at all. The witness on giving his testimony said that he had been wounded on the cheek, and if so, it was to be presumed they would have made impressions which would have been then visible.

There was one circumstance which he would mention, that appeared very much in favour of the two prisoners, Kinch and Watson ;—on the examination of one of the witnesses, he said, that before the last shot was fired, some persons cried out, " Shields, don't you fire, for if you do there will be murder." Then did it not seem, as if the other muskets were loaded differently from the one out of which the last shot was fired ? Several witnesses had sworn that the last was the fatal

shot ; that it was in consequence of that shot the man came by his death. And if the gentlemen of the jury believed that the muskets which Kinch and Watson had were loaded with powder only, or with blank cartridges, of any think that would not commit murder, (for only one of the shots seemed to have taken effect) their case deserved to be distinguished from that of the prisoner Shields. And if they were of opinion that he it was who fired the shot which was the cause of the man's death, he did not see any thing in the case that could excuse, alleviate, or justify the act. He fired the shot at his peril, and was answerable to his country for the consequence. The unfortunate man who lost his life, did not appear to have been involved in the riot, or in making the bonfire, and appeared by the evidence of his master to have been employed about his business until 9 o'clock.

Mr. Baron George concluded, by observing, that if the gentlemen of the jury, upon the evidence laid before them, should be of opinion that all the prisoners at the bar went out with a murderous intent, they would every one be as guilty as the person who actually fired the shot, and then they would give such a verdict as justice and the law demanded ; and he directed them upon the whole of the evidence, to consider whether Shields fired the shot by which the man was killed, and if they believed the shot was fired by him, it would be then for their consideration whether Shields alone committed the murder, or whether he was joined in the commission of it by the other two prisoners.

The Jury retired about 3 o'clock, and the Judges having waited some hours, and perceiving no likelihood of the Jury agreeing in a verdict, adjourned the Court until nine o'clock next morning leaving the Jurors locked up.

The Jury, after remaining in until near two o'clock next day, acquitted Kinch and Watson, but not agreeing in a verdict relative to Shields, was discharged ;—the prisoner was accordingly remanded for trial the next sitting of the Commission ;—and then the Court adjourned until Saturday, the 4th of December following.*

* See the next case.

653. The Trial of WILLIAM SHIELDS for the Murder of THOMAS RYAN; before the Court holden at Dublin under a Commission of Oyer and Terminer, on Monday December 6th: 43 GEO. III. A. D. 1802.*

Sessions House, Green-street: Monday, December 6th 1802.

Present.—The Hon. Mr. Justice DAV; the Hon. Mr. Justice Fox.

Counsel for the Crown.—Mr. Mac Nally; Mr. Jonas Greene; Mr. Ridgeway; Mr. Bethel.

Agents.—Mr. Kemmis, *Crown Solicitor*; Mr. Leonard Mac Nally.

Counsel for the Prisoner.—Mr. Egan; Mr. O'Driscoll; Mr. Bushe; Mr. Giffard.

Agent.—Mr. R. Newell.

THIS day the Court met, pursuant to the adjournment of Saturday last, and proceeded on the trial of William Shields.

Mr. Giffard moved that the rule entered into on the discharging of the former jury should be read, in order that he might be enabled to understand, under what circumstances they had been discharged, in case any point should arise as to the legality of his client being put a second time on his trial. He was necessitated to trespass a little on their lordships' time; having received his brief but a short time previous to his coming into court, he was not fully acquainted with the circumstances of the case.

The Court ordered the rule to be read; which imported, that in as much as the jury could not in any wise agree, and that the justices were about to depart from the county, the business having been finished, the said jury were ordered to be discharged, and that the prisoner Shields was thereby remanded, in order that he might abide his trial at the next sitting of the commission.

Mr. Giffard stated that there was another difficulty under which he laboured, which was, that Mr. Egan, Mr. Bushe and Mr. O'Driscoll, to whom he said he was junior, were absent.

The Court said the prisoner had such long previous notice of the time at which he was to be tried, that he ought to be prepared; that perhaps the gentlemen whose absence was lamented by Mr. Giffard would shortly arrive, and that at all events they considered the prisoner as having a very able advocate in Mr. Giffard.

The following Jury were then sworn.

Josias Philips,	John Parker,
Mark Saunders,	Francis Darlington,
Samuel Dunbar,	Philip Bere,
William Hatton,	John Hill
James Gibball,	Henry Lemaistre,
H. James Williams,	Joseph Harrison.

Mr. Mac Nally.—My Lords, and Gentlemen of the Jury;—I am counsel for the crown; and I am happy to find that one of the objections of the counsel for the prisoner is now removed, by the appearance of Mr. O'Driscoll, a gentleman, the advantage of whose abilities, Mr. Giffard seems to think so necessary; and it certainly must be of great utility to the prisoner.

I shall state to you, gentlemen, the facts with which the prisoner stands charged; and when I have concluded, I shall have satisfaction in reflecting, that if it was not my duty to extenuate the crime of which he is accused, I at least have not endeavoured to aggravate it, by any unnecessary observations. But, gentlemen, I shall first call your attention to one observation, which I think will be of as much service to the prisoner on his trial, as it will be to public justice; it is this; that you should divest yourselves of any impression arising from any thing that you may have heard or read of this business, previous to this time; that you will confine yourselves to the facts which shall be laid before you, and that you should not draw any conclusion or inference from any thing but the evidence which will be this day produced to you; and their lordships will agree with me, and with the opinion of that learned character lord Mansfield, that a jury should be divested of all prejudice, and that they ought not to receive any impression but what would be sanctioned by the testimony of credible and respectable witnesses.

The prisoner stands charged with murder, one of the greatest crimes of which human nature can be guilty. But, gentlemen, in proportion as the crime with which a man stands charged militates against the laws of society, the greater ought to be your circumspection in receiving evidence of his guilt; and you should well consider of the credibility of the witnesses giving such testimony.

I am sanctioned in the observation I am going to make by the opinion of several judges, that if a man commits homicide, the *onus*

* See the preceding case.

probandi lies upon him, and he is bound to show under what circumstances he committed it, and to produce evidence of his having committed that homicide under circumstances that might excuse or extenuate it; and if he fails in such proof, the law will supply the malice necessary to constitute the crime of murder; and gentlemen if it shall appear to you upon the evidence, and if you shall be of opinion that the prisoner committed the homicide mentioned in the indictment, I shall submit to their lordships as to the law on the subject; you, gentlemen of the jury, are judges of the facts, but as to the law upon the subject, you are bound to act under the advice and by the direction of their lordships. I will now state the material facts, as they will appear in evidence before you, against the gentleman at the bar; they are these; I shall state them shortly, and I will not take up your time by stating circumstances not material to the issue of this trial. On the 14th of July last a bonfire was lighted in Kevin's-street, at the Fountain, about 11 o'clock at night; a man of the name of Thomas Ryan, who had been in the service of alderman Stamer, in whose house he was employed until a short time before that hour, and had left alderman Stamer's house to go to his lodgings, in the neighbourhood of Kevin's-street, stopped at the bonfire, and while he was standing there, peaceably looking on, close to the Fountain, three shots were fired, and then a fourth, which was the fatal shot; a ball entered his forehead and went out at the back part of his head, and he expired without a groan.

I would not wish to suppress any fact material to the fair and impartial investigation of this matter, and will therefore state to you, that the day on which the deceased man was killed was the anniversary of an event which happened in another country, I mean the French Revolution; and the 19th was the anniversary of a day no less remarkable by the abdication of king James, and the accession of king William to the throne. There was an opposition of miscreants belonging to two different factions, whose politics I shall not at present descant upon, and to this opposition an unfortunate and innocent man fell a victim.

I am instructed, gentlemen, to state, that the prisoner at the bar, with several other persons, crossed the street from Cathedral-lane to the Bishop's palace; that they passed under the shade of the dead wall, enclosing the Bishop's palace, unknown to any of the persons who were at the bonfire; and I understand, that when the party came nearly opposite to the bonfire, the prisoner Shields gave orders to the rest of the party to fire;—expressions were made use of which I shall not now state to you, but I will leave the relation of it to the witnesses who will appear before you;—and that, in a short time after, the prisoner, singly and individually, fired a musket,

by means of which Ryan was killed; and, gentlemen, it will lie upon him to show (as I have before observed to you) if the facts shall be proved by the evidence laid before you under what authority he shot the deceased man; whether it was in defence of his life, whether it was unavoidable, or through necessity; but, gentlemen of the jury, if it shall appear to you, that those shots were fired with an intent to kill any person, I know of no law which could possibly justify the act; and if there is such a law, I am yet to be instructed in it, by the gentlemen on the other side. This, gentlemen, is the case you are to try; and it is a case of a most serious nature, and on which depends the life of the prisoner at the bar.

James Morris sworn.—Examined by
Mr. Greene.

Did you know Thomas Ryan?—I did, sir. Is he living or dead?—Dead, I believe.

Did you see him dead?—I did, sir.

Where?—At the Fountain in Kevin's-street. On what day?—On the night of the 14th of July last.

Did you attend on the coroner's inquest on the day following?—I did:

Did you see surgeon Rorke there?—I did, sir.

When did you see him last, before you saw him dead?—I saw him before he returned to alderman Stamer's for the last time, on the evening of the 14th.

Mr. James Rorke sworn.—Examined by
Mr. Bethel.

Did you go in a professional capacity to any place on the 14th of July last?—I did, sir; I went on that day to see a man in the crane-yard, in Kevin's-street.

Was he living or dead?—He was dead.

Had he the appearance of being wounded?—He had.

Of what nature was the wound?—It seemed to have been inflicted with a gun, or some such instrument, charged with combustible matter; and the contents of which instrument entered his forehead, traversed the brain, and came out at the back part of his head.

Mr. Mac Nally.—What you want to get out of this witness, I will ask him: Was it a mortal wound?—It was.

Michael Johnston sworn.—Examined by
Mr. Ridgeway.

Be so good as to answer the questions I shall ask you. Your name is Michael Johnston?—It is, sir.

Where do you live?—In Kevin's-street.

Did you live there on the 14th of July last?—Yes, sir.

Do you remember the evening of the 14th?—I do, sir; I went home and threw myself on the bed, for I was unwell.

How far do you live from the Fountain?—About forty or fifty yards I believe, on the opposite side to the palace.

You were not very well on that evening?—
I was not.

How long did you remain on the bed?—
Until 10, or a little after 10 o'clock.

Now, upon what occasion did you get up?
—I heard huzzaing quite loud.

Did the noise appear to proceed from the
people at the Fountain?—So I thought.

After that did you see any persons pass by?
—I turned about, and saw some persons
about 20 yards from me, at the corner of Ca-
thedral-lane.

How many persons were there?—About 9
or 10.

Were they armed?—They were, they had
among them four firelocks.

Did you observe them do any thing?—I
saw Mr. Shields jump forward from the mid-
dle of them.

Then you swear the prisoner Shields was of
that party?—He was.

Had he a firelock in his hand?—He had.

What did you next observe?—I heard him
swearing by the Holy Ghost that he would
make a lane through the crowd that were at
the Fountain.

Are you certain now, Johnston, that you
heard him use that expression?—I did in-
deed, sir.

Did you do any thing in consequence of it?
—I turned about and took my hat which lay
upon the table at the window, and ran down
stairs as hard as I could.

Did they observe you?—Yes, they could
not but see me: they pursued me, and I ran
down to the Fountain, and clapped my hands,
and told the people that if they did not run
away there would be murder; and the words
were hardly out of my mouth, when I saw 9
or 10 persons near the cooper's.

The persons you saw at Cathedral-lane?—
Yes.

Did any thing else remarkable happen?—
Yes, three shots were fired by the party, and
I do think that the muskets were not loaded
with ball, or some one would have been kil-
led; I then heard some one cry out, "Shields,
Shields, if you fire there will be murder."

Was that before or after the three shots
were fired?—It was after.

Did the prisoner do any thing after that?—
Shields said, "by the Holy Ghost I will fire;"
a shot was then fired, and the man fell.

Where was he standing at that time?—I
thought he was standing nearer the Fountain
than to the Crane.

Did he advance forward?—He appeared to
me to jump forward from the flags into the
street.

Court.—You are not perfectly sure of that?
—I am not.

Mr. Ridgeway.—Are you certain it was
Shields who made use of those expressions?
—I am certain that it was he, and no one else.

Court.—What space of time elapsed from
the time you heard the prisoner make use of
those expressions, until the shot was fired?—
Three or four minutes, I believe.

What expressions do you allude to?—He
said "by the Holy Ghost he would fire."

Do you know who fired the shot?—I do
not.

Was the deceased man, Ryan, killed by the
shot?—He was, he fell in a little heap of
sludge, that was forment Mr. Segrave's door,
and I cried out that the man was murdered.

Were you subject to sickness?—Yes, I got
a paralytic stroke, and am very weak.

Mr. Ridgeway.—Were you at the inquest?
—I was.

Where?—At the Crane.

Did you see the surgeon there?—I did not
take particular notice.

At the time that you went up to the bee-
fire, did you see any riot?—I did not see any
riot in the world.

Did you hear any noise or huzzaing?—I
heard a noise when I was in bed.

Did you see the man after he was killed?—
Yes, I saw him dead.

*Michael Johnston cross-examined by
Mr. O'Driscoll.*

You had no motive whatever, I presume,
on this or the former trial, but to do an act of
public justice?—Just the thing; I had no
other motive whatever.

Did you hear that all Shields's party were
yeoman?—I know that Shields was a yeoman.

Pray, sir, do you know a man of the name
of Kinch, whom you swore against on a for-
mer occasion?—I did not swear against him.

Did you see him among the party?—I did
not.

Do you not believe that this man came out
in defence of his own life, and for the protec-
tion of the neighbourhood?—I never heard it.

Did you never hear that persons were huz-
zaing for the French revolution?—I did not.

Did you live in the street on the 12th and
13th?—I did.

Did you hear any thing about a tree of li-
berty?—I did not.

When you went up to the Fountain, did you
see any thing like a tree of liberty?—I did not
see it.

Do you believe there was one there?—It
might be so.

Do you believe that they had a tree of li-
berty?—I do not know any thing about it.

Do you believe it?—I do not.

What made you awhile ago say; that you
did not doubt but they might have had a tree
of liberty?—I do not know what it is.

Well, it is any green branch that they might
call the tree of liberty: but you said awhile
ago, that you did not doubt but that they had
a tree of liberty, and you said just now that
you believed they had not any such thing; be
so good as to reconcile this seeming contradic-
tion to the Court and the gentlemen of the
jury; I am sure you can do it?—I do not
know what a tree of liberty is.

Did you ever hear what it was?—I did hear
something about it, but I cannot recollect
what it was.

You were asleep from 6 till past 10 o'clock; did you hear that a party were going through the street, calling for bloody heretics and orangemen, to the terror of the Protestant and loyal inhabitants of the street?—I always keep myself to myself, and never heard any thing about it.

Did you ever hear that the Protestants were called bloody Orangemen, and that the yeomen were called bloody yeomen?—I did not, nor would I stand by to hear it.

Do you believe there was a mob in the street?—There were some people about the bonfire; and I heard shouting.

When you went up to the bonfire, how many persons were assembled?—I cannot tell.

Were there 20?—I cannot tell, for the huzzaers all dispersed when I went up to them, and told them there would be murder if they did not go away.

Did you see any disturbance on the 15th, the day before the man was killed?—I did not.

Did you on the 12th?—On the 12th I saw Shields dancing round a pitch barrel that was lighting.

Did you see any one else there?—Yes, people on and about the flags.

This is the third time you were examined relative to this business; you were examined on the coroner's inquest, and on the last trial?—Yes.

Now, do not you believe that you had as clear a recollection of the circumstances on the day you were examined before the coroner's inquest, which was the very day after the affair happened, as you can possibly now have after such a lapse of time?—I do, as to what I saw.

Now, by virtue of the oath you have taken, did you not tell the jury on that inquest, that the expression you heard Shields make use of was, "I must go and disperse the mob at the Fountain;" I mean when you gave evidence at the coroner's inquest?—I do not understand what you mean.

Did you mention to the jury on that inquest, that Shields swore he would make a lane through the people at the Fountain?—I did.

Did you tell them, that when some person cried out, "Shields do not you fire, or there will be murder," that he made answer, "By the Holy Ghost I will fire?"—I did.

And did you tell him that a shot was fired in two or three minutes after?—To the best of my opinion I did.

You live at No. 15; you have lived there for a long time?—I suppose for about a year.

Do you remember ever to have heard, that the houses of many of the Protestants and loyal inhabitants of the neighbourhood were attacked on the 12th, 13th, and 14th at night, or that windows were broken?—I did not.

You were examined on the last trial for this alleged murder?—I was.

And do you not believe that eleven out of twelve of the jury did not believe one word of what you said upon that occasion?

Mr. Mac Nally.—I object to that question; it certainly cannot be a fair or proper question to ask any witness.

Court.—It certainly is not a proper question to be asked.

Mr. O'Driscoll.—I ask you, on your oath, do you not believe that many people in the neighbourhood wished for the death of the prisoner on account of his loyalty?—I do not; the man never injured me, and I do not wish him any injury.

Have you not heard, and do you not believe, that the prisoner was a man of a very peaceable, quiet disposition, and that he often used exertions to suppress disorder?—I have seen him do so: I never knew any harm of the man in my life, nor never knew him to behave improperly in the whole course of my life.

Court.—You say you never heard any thing to the prejudice of the man; now, had you an opportunity of knowing his character from living in the neighbourhood?—I had.

And was his general character a good one?—I never knew any thing to his prejudice until the present business. He never injured me, and I do not owe any enmity to him.

One of the Jurors.—How could you distinguish his face so well at that time; or how did you know his voice amongst a crowd of people?—I often heard him in the street when he was coming home to his own place, calling out mother; and I often rose to look at him, and took notice of it.

How far were you from Shields when you heard him make use of the expressions you mentioned?—Forty or fifty—

Court.—Forty or fifty yards?—No, my lord; I believe twenty or thirty.

Is it between forty and fifty yards, or less?—I do not think it is fifty yards, but I cannot be certain.

One of the Jurors.—I know the place, and I am sure it is near a hundred yards.

Mr. Justice Fox.—Where were you standing?—At the corner of Mr. Segrave's house.

Was it after you had quitted your lodgings, in order to give the alarm to the people at the bon-fire?—It was after I left my own place.

Were you at all concerned in this transaction?—I was not.

Pray, how came it to pass that you went out and passed by a man, and went up to the Fountain, after you had heard him make use of those horrid expressions, swearing that he would make a lane through the crowd at the Fountain?—I worked at Mr. Barrett's in Bishop-street, and I thought that some of my shop-mates might have been at the fire.

Then you went to save them by giving them warning of their danger?—I did.

What is Mr. Barrett?—A button-maker.

Mr. O'Driscoll.—When you came out of the house and looked down, had you a view of the people at the bon-fire?—I had.

How far had you to look?—Almost the whole length of the street.

Upon the oath you have taken, did you not swear at the last commission that there were only about 7 or 8 children at the bonfire?—I did not.

One of the Jurors.—Did you hear that the prisoner's windows were broken?—I heard it; but it was after the man was shot that Shields's house was broken, in order to search for him.

Andrew Mac Manus sworn.—Examined by *Mr. Mac Nally*.

Did you know the man who was shot?—Never, to my knowledge.

Did you see him on the night he was shot?—Not to my knowledge.

Were you at the bonfire on the night of the 14th?—Yes.

Who were at the bonfire when you were there?—A good many women and children.

Were they armed?—No; they were not.

Had they any sticks?—Yes.

Were you armed?—No.

Did you hear firing?—Yes.

What time did it take place?—Between 10 and 11 o'clock.

Whereabouts did you stand?—Near Mr. Lamb's.

How far from the bonfire?—Near a hundred yards.

While you were standing there, were there many shots discharged?—I believe four or five.

Were you wounded by any of those shots?—Yes, by the second and third.

Did you hear any single shot?—I cannot say; for when I was wounded I was brought into a room to stop the blood.

Where were you wounded?—In the side of the head, in the arm, and in the side.

Have you any mark remaining in consequence of the wounds you received by means of those shots?—Yes.

Where?—Here, in the side of my head near the ear.

Mr. Giffard.—My eyes are not sharp enough to perceive it.

Mr. Mac Nally.—Is there any shot not yet extracted?—Yes.

You received them on that night?—I did.

From whence did they seem to have been directed?—From the Crane gate.

How far was that?—About 100 yards.

Did you see any of those shots?—I saw a grain of shot, seemingly chewed shot.

Were you attended by a surgeon?—I was.

By whom?—Surgeon Hallahan.

Now, *Mr. Mac Manus*, on your oath, was there any riot at that time?—No.

Could there have been a riot without your seeing it?—There could not.

Did the shots take a line in the direction of the Fountain?—No; rather, I think, below the Fountain.

Now, let me ask you, did you see Ryan, the man that was killed?—I did not, until the next day.

Where?—Near Mr. Segrave's door.

Do you know the prisoner at the bar?—I do.

How long have you known him?—About two years.

Did you see him on that night?—I did not, to my remembrance.

Andrew Mac Manus cross-examined by *Mr. Giffard*.

Where do you live?—In Kevin's-street.

Did you live there in July last?—I did.

It was your usual place of residence at that time?—Yes.

Did you live near to the place where the witness Johnston lived?—He lived in one Kevin's-street, and I in the other.

Where were you going at the time you were attracted by the bonfire?—Some person came up to my place, and told me there was a bonfire; I believe it was one of my sisters.

Did you hear upon what occasion?—I did not.

Perhaps you did not conceive the meaning of the question. Did you hear that the bonfire was lighted for the purpose of rejoicing?—I did.

Upon what occasion?—I did not hear.

Did you observe any particular decoration about the Fountain upon that night?—I saw some green boughs.

Do not you think that any one else could have seen them as well as yourself?—I do.

What do you believe the green boughs were to signify?—I did not hear any thing about them.

What do you believe they were put up for?—I do not know for what reason.

And you never heard it?—I never did.

Did you hear any riots on the 14th of July?—I heard a man say here that there was a riot, but I did not see it.

Do you believe the man who said it?—I do not.

Did you ever hear it before?—No, sir; I only heard it from him.

Did you hear of any riot, or collection of people on the 13th?—I heard that the windows of a house were broken.

Was it before or after the night of the bonfire?—I believe it was before.

Did you hear whose house it was?—I did; but I do not now remember.

Do you remember either his surname or christian name?—I do not.

Or what description of person?—I forget now.

Court.—Was it on the 13th or 15th?—I cannot tell.

Mr. Giffard.—Do you know any of the persons who were at the bonfire along with you?—I know a boy who lived next door; and also a boy of the name of Shannon.

Who was the other boy?—A cooper's apprentice.

What was his name?—Barney Clarke.

Who was the other boy?—He was a married man.

So the other boy was a married man. Were there any other married men?—There were a good many people there, and some of them had sticks.

Were they shouting?—Yes.

Did you shout?—I do not know whether I did or not.

If you did shout, what did you do it for?—I cannot tell.

Did you hear that there was a bonfire on that night in any other part of Dublin?—I did not see it.

Can you form a belief?—I cannot.

Did you not hear that there was one in Patrick's close, or in Corn-market?—I did not.

Do you believe that there was one in Corn-market?—I never heard of it, or saw it.

Cannot you form a belief?—I cannot form a belief about a thing that I neither saw nor heard of.

What was the bonfire made of?—Of some staves.

Do you believe that they ever formed part of a barrel?—Yes.

Was it a pitch barrel?—I cannot tell.

Did you not see people running about with some of those staves blazing in their hands?—Some of them were thrown about.

Did you hear any person calling out "bloody Orangemen"?—No.

Did you see any bonfire in Patrick-street?—I did not.

Were you there?—I was.

What brought you there?—To walk backwards and forwards.

Then you took this pleasant walk between 10 and 11 o'clock at night?—No; between 8 and 10 o'clock.

Did you pass by Patrick's-close?—Yes.

Did you see any bonfire there?—I did not.

Should you not have seen it, if there had been a bonfire in Patrick's-close?—I did not see any bonfire.

Was it before or after you were there that the bonfire was in Patrick-street?—I did not hear any thing of it.

Did you not hear that there was such a bonfire, and such a mob assembled at it, that a magistrate was obliged to interfere?—No.

Did you hear that there was a bonfire in Back-lane?—I did not.

Do you not believe that during the 13th and 14th days of July, it was dangerous for the Protestant inhabitants of that neighbourhood to appear in the street?—I do not believe it.

Margaret Kearns sworn.—Examined by Mr. Greene.

Do you remember the night on which the man was killed in Kevin's-street?—Yes, sir.

Where did you live on that night?—In Kevin's-street, the very next door to Mr. Segrave's house.

Do you recollect to have seen a bonfire upon that night?—Yes.

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Do you recollect to have heard shots fired upon that night?—Yes.

About what time?—About half past 10 o'clock.

Where were you?—In my own room window.

How many pair up do you lodge?—One pair up in the street room, opposite the Fountain.

Now state what you saw occur on the night of the bonfire?—I was looking out of my window, and I saw the bonfire lighting, and Kinch, Watson and Shields came up the middle of the street towards the Fountain.

Do you see Shields in court?—I do; there is the man.

Were you then looking out at the window?—I was.

Did you see them do any thing?—I saw them fire; and afterwards Mr. Shields fired, and the young man staggered and fell.

How many shots did you hear in all?—I believe four; I saw no damage done until the last shot, which I saw Mr. Shields fire, and then the young man staggered and fell.

What time elapsed between the firing of the first and last shot?—About two minutes.

Do you remember to have heard any expression made use of on that occasion?—Not before the man fell; and then Mr. Kinch called out; "bloody end to you, Shields, you lik'd to shoot me."

Court.—Did you hear those expressions before you heard the last shot?—I did not.

Mr. Greene.—Did you see any person fall, when the last was fired by Shields?—Yes; I saw the young man stagger and fall.

Do you recollect the position in which Shields stood with respect to the rest of the company?—I do; when he fired the shot he was in the middle of the street, nearer to me than the rest of the party.

Was there any riot at the time the shots were fired?—No.

Are you positive?—I am positive that there was no riot until the day on which the Coroner's Inquest was held, when the dead man was laid at Mr. Shields's door, and his house was broken.

Margaret Kearns cross-examined by Mr. Bushe.

Were you there the whole day?—I was at the window the whole evening.

I suppose Mr. Shields was so near to you, that you could hear distinctly all he said?—Yes, I could.

Then of course you could hear what other persons said; did you hear any persons shouting?—I did not.

Who were there?—I saw none but children about the height of that—[Here the witness raised her hand about four feet high]—I saw no one else make any noise.

Then there were no grown persons making a noise?—To be sure they were growing up when they were children.

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Yes, children, if they live, will grow up to be men and women, no doubt; but you said there was no man there, now was the deceased man, a woman or a child?—I did not see him until I saw him stagger and fall; I never saw him before.

Were you ever in the whole course of your life in a mob? do not you know what a mob is?—Yes.

Did you ever see one?—Yes.

Was there a mob there?—There was not.

Were there green boughs about the Fountain, and about the fire?—No, only a small bit of a bush, which a boy stuck up to the lamp, and it was pulled down immediately.

Then you saw the boy stick it there?—I did.

And you saw it taken down?—Yes.

By whom?—By the people who came to get water, for it was in their way.

When?—A great while before the shots were fired.

Did you hear the people calling out for Orangemen and Heretics?—I did not.

Did you hear any one say "damn the king"?—By virtue of my oath, I did not hear any such expression.

Was that evening as quiet and regular an evening in Kevin's-street as any other in the year?—I do not know, sir.

Did you hear any disturbance?—I did not.

Did you ever hear that there was anything particular on the 14th of July?—I did not know it was a particular day.

I suppose you know Patrick's Day is a particular day?—I do not know any thing about particular days in the year.

Really you seem to be a lady of information quite above the common rank, and to know as much as most people; now, did you not know that the 14th of July was a remarkable day?—I did not.

On the 12th of July, I suppose you rejoiced yourself on account of the battle of Aughrim?—I did not, I had something else to mind.

I see you are a prudent woman, and would not waste your time in idle rejoicing; but did you not hear that some persons were rejoicing on the 14th, on account of the French revolution?—No, I never did.

Then it must have been a mistake of mine when I said, that there was a rejoicing for the French revolution?—I do not understand any thing about that business.

Did you not see any person take up the staves which were blazing, and run with them about the street?—I did not.

Were you there the whole time?—I was, the whole evening.

I will ask you one preliminary question, and I give you warning that it is for the purpose of contradicting your evidence by that of another witness; did you not see a large mob calling out, "where are the Orangemen"?—I saw no such thing; nor did I ever hear the expression you mentioned, made use of.

You must have seen what passed, as you were at the window?—I certainly must.

Did you hear the testimony of the man who was examined a while ago?—I did not, I was not in court.

Do you know what a yeoman is?—I do.

Your husband was one?—He was.

I understand he retired from the yeomanry?—He did, because there was a false accusation against him, made by the company he belonged to.

What corps was it that he was in?—The Upper Cross Fusiliers.

Now let us give things their right names, was he not turned out of the corps?—He was.

What was the information against him?—For wearing white lilies; and by virtue of my oath, it was false.

Now, will you tell me a lady who had a husband a yeoman, never heard of the French revolution? can you read?—Yes.

Did you ever read a newspaper?—Yes.

And you never heard of the French revolution?—I never knew any thing about that business.

Did you ever hear there was a war?—Yes, I did.

Did you ever hear who were the king's enemies?—Yes, I did.

Did you ever hear they were the French?—Yes, I did.

Now, I am certain this was an unjust and ill-natured transaction, and a very illiberal charge against your husband for wearing white lilies; but the world might be as ill-natured with respect to yourself. Were you ever charged with stealing goods from one Fanning a pawn-broker?—Never.

Do you know Fanning?—I have seen him.

And did he never charge you unjustly; for if he did, I'm sure he must have charged you unjustly?—No one can say to the valuation of one farthing against me.

Did the same ill-natured man accuse you of living with a man who had three wives; and that you passed as his wife?—And I am his lawful wife.

I do not at all doubt that; I only want to know whether some ill-natured person did not accuse you of what I mentioned?—It was no such thing.

And were there never any ill-disposed wicked women who laid claim to your husband?—No; no such thing.

You must have known a good deal of what happened before the transaction of the 14th: were there any riots during the two days previous to the 14th?—No; only just as I told you before, on the 12th and on the first I saw bonfires.

Do you know where Shields lived?—I do.

Could you see it from where you lodged?—I could.

And can you take upon you to say whether his house was or was not attacked and broken into previous to this transaction?—It was not until after the man was killed.

Did you never hear it?—I never heard any such thing.

Do not you believe those bonfires were lighted on loyal occasions?—I do not know.

Did you ever hear of king William's birthday?—I did, sir.

But you never heard what the bonfire was lighted for on the 14th?—I know nothing about the bonfires. I know nothing about one side or the other.

What do you mean by that? I find now that you know there are two parties; who are they?—I do not know.

Now, do not you love the yeomen who protected the country in the year 1798?—I have nothing now to say but what I have already said. I know nothing about the other things you mentioned.

William Lawlor sworn.—Examined by Mr. Ridgeway.

Where do you live?—No. 52 Kevin's-street.

Whereabouts in Kevin's-street is it situated?—Near the Deanery.

Do you remember the night of the 14th?—I do, very well.

Do you know Shields?—Yes.

Did you see him upon that night?—I did.

About what time?—It was early.

Did you see the bonfire at the Fountain?—I saw the reflexion of it from my own house.

About what hour did you see Shields?—It was between 8 and 9 o'clock when I first saw him.

What time did you see him afterwards?—About 10 o'clock, or a little after.

What part of the street was he in?—I saw him coming from towards the house of one Smith a publican.

Was he accompanied by any persons?—He was, by two others, armed with muskets.

Had he a musket?—He had.

What did you see him do?—I saw him prime and load under the windows of a house belonging to a man of the name of Peter Murray, or in the manner of priming and loading.

Did the others go through the same ceremony?—They did. After I had seen them go through this operation, I heard Shields roar out to Peter Murray, "you cowardly rascal, are you afraid to come down."

Did Murray come down upon this?—He did.

What became of them?—I saw the four persons advancing with muskets.

Is it the fact that Peter Murray made the fourth?—Murray made the fourth.

What did you see the prisoner do after they advanced?—I saw them advance towards the Fountain, and I heard Shields say, "by the Holy Ghost he would have murder." They then stopped at the corner of Cathedral-lane, and went out into the middle of the street, and I heard Shields say, "fire, fire!" and I then heard either three or four shots fired.

Did you hear in what direction?—I did not. Can you say by whom these shots were fired?—No. After the shots were fired I heard Shields roar out to "retreat and load."

Are you positively certain that it was Shields made use of that expression?—I am.

Did you see them do any thing in consequence of that expression?—I saw them retreat, and saw Shields receive a fresh musket from a woman.

Court.—Did you hear the prisoner saying any thing?—I saw Shields advance towards the Fountain, and I heard a voice saying, "don't fire, don't fire," and then I closed my window.

After that, did you hear a shot fired?—Yes: and immediately after, murder was roared out from the middle of the street; and then the party retreated and went off.

What part of the street did the shot seem to come from?—From near the Fountain.

Who was it that you saw retreat when murder was cried out?—Shields's party.

How could you see that when you had shut the window?—I saw through the window.

Are you certain he was one of the party who retreated?—He was.

You did not see in what direction he went afterwards?—I did not.

Did you after this go out of your house?—Not until all was over.

How soon?—About twenty minutes. I went to assist in regard to the taking the persons concerned in this business.

Where did you go to for that purpose?—To Peter Murray's house, where one Foote lived.

Did you know where Shields lived?—Yes.

Did you go there?—I did.

How soon after the shot was fired?—I believe about ten minutes.

Did you make a search there?—No, sir, his door was fast.

Did you inquire for him?—He was inquired for in my presence.

William Lawlor cross-examined by Mr. O'Driscoll.

You are a yeoman, I presume?—I never was.

Were you in Dublin since the year 1798?—Since I was born.

Do you know Shields, the prisoner at the bar?—I do.

Do you know a woman of the name of Margaret Kearns?—I do, she lives near Mr. Segrave's.

Do you live near her?—No, I live at the corner of the Deanery-place.

Court.—How far distant?—I believe about twenty perches.

Do you know the length of a perch?—I do.

What business do you follow?—I am a bricklayer.

When he roared out that he would have murder, how far was he from the Fountain?—Something more than half of the street.

Do you believe he could have been heard at a great distance?—I believe he could have been heard at the other end of the street.

Was that just before they fired?—Yes.

Were shots fired by the party at the Fountain?—I never heard that there were any shots fired by the persons at the Fountain.

Nor you never heard that shots were fired by the mob?—Never.

You spoke of a man of the name of Foote; did you hear there was a shot fired at him?—No.

Did you swear at the last commission that you heard the prisoner say, that he would have murder?—I do not exactly remember, but if I did not say it, I ought to have said it; I might have been too much confused at the time that I forgot it, but I intended to have said it.

You were examined on the coroner's inquest?—Yes, I was.

Did you tell them then that you heard him say he would have murder?—I believe I did.

It was a remarkable expression; do not you remember it?—It is a long time since.

Did the expression shock you very much?—I do not know, it is common in all parts of Dublin.

So then it is common for persons to say, "by the Holy Ghost we will have murder?"—No, I do not mean murder.

What then?—Only to swear that oath.

That expression might have been heard at the end of the street?—Yes.

You did not go to the bonfire?—I came home at six o'clock to my own place, and never stirred out until the man was killed.

Was there any riot in the street?—I did not see any.

You saw them, through the window, retreating after the shot was fired?—I did.

Was there any loud shouting from the hour of six until the man was killed?—I cannot say there was; there were a parcel of go-spoons and boys making a noise.

Did you hear that those boys had a tree of liberty on that evening?—I did not.

Did you hear that any green branches were upon the Fountain?—No.

Do you believe it?—I cannot tell.

If a mob of 200 or 300 people were going through the street must you have heard it?—I must.

Did you go near the bonfire that evening?—I did not, I heard there was to be a bonfire.

Did you hear for what reason?—I cannot say.

Did you give the boys a halfpenny, or a penny or two-pence towards the bonfire?—I did not.

Were you in the street on the 13th of July?—I was.

Did you see any thing remarkable on that evening?—No.

Well, on the 12th, were you in the street?—I was.

Was there any thing remarkable on this day?—A set of armed men were going through the street.

To the terror of all the peaceable inhabitants of the neighbourhood, as you swore on the former trial, was it not?—I believe it was.

Now, do not you believe that the yeomen were very riotous and disposed to attack the houses of the peaceable inhabitants?—I cannot say.

Did you hear it?—Yes, I heard when I came home, that the yeomen fired at some green sparement which was growing out of the window.

Did you ever hear what was the occasion of the bonfire being lighted upon the 14th?—Because the other party had a bonfire on the 13th.

And so they wanted to retaliate on the yeomen, or to be even with them, by showing that they could have a bonfire as well as the yeomen?—I do not know.

Did you ever hear any thing of the French Revolution?—I did.

Did you hear when the Bastille was attacked?—I did, on the 14th.

Now, did you hear on what occasion the bonfire was lighted?—I did not hear whether it was on account of the French Revolution or not.

Now, on the oath you have taken, do you not believe that the yeomen have become obnoxious and hateful to a different description of people in that neighbourhood?—I cannot tell.

Do not you believe that on the last commission crowds of people from Kevin's-street assembled about this court?—I believe there were some people from Kevin's-street, but I cannot tell the number.

Now, on your oath, do not you believe that the Kevin's-street people were very much disappointed that Shields was not convicted?—I cannot tell.

Come now, tell me honestly, were not you yourself disappointed?—I never coveted the death of any man.

Then your only motive for coming here is for the sake of public justice?—That was the motive that brought me here.

Court.—Where is your house situated?—At the corner of the Deanery, and the Fountain is farther on.

In what situation were the party with respect to you?—Between me and the Fountain.

Which way were their faces?—Towards the Fountain.

Where is Mrs. Kearns' lodging?—At the corner of Kevin's-street, leading down to the other Kevin's-street.

Were the men in such a situation that she could see them?—She was nearer to them than I was, when they fired.

Was it after the first shots were fired, that you heard those blasphemous expressions?—It was.

Did you see the people at the Fountain?—No, I believe they were dispersed, or there would have been more killed than one.

One of the Jurors.—One of the witnesses swore that they were near the cooper's door; if it was so, you could not have seen them.

Court.—If they were at the cooper's door, could you have seen them?—I saw them all distinctly: I saw them fire the shots, which went as if from different parts of the street, like a *feu de joie*.

John Donnelly sworn.—Examined by Mr. Bethel.

Do you know the prisoner at the bar, William Shields?—I ought to know him, for we were fellow soldiers.

Do you recollect accompanying a man of the name of Macmanus, for the purpose of apprehending Shields?—I do.

What part of the country did you go to for that purpose?—To within five miles of Cavan, and we were there directed to where we saw him, in gaol at Navan.

Had you any conversation with him relative to the subject of this prosecution?

Mr. Egan.—I submit that if he was in gaol—

Court.—Any question of that kind is a matter to go to the jury.

Mr. Bethel.—Did you hold out any hope of pardon or threat?—I did not.

Mr. O'Driscoll.—Did you tell him that he would suffer?—I did not. I went on purpose to show him to Macmanus, who did not know him.

Mr. Bethel.—Now, what happened?—The man that spoke first was Mr. Shields; says he, "it is a pretty piece of work; your comrade has deceived me;" and I said, it was not he, it was I that sold you.

What do you mean by that?—Because he was unknown to the person.

Mr. Egan.—My lords, I submit that the testimony of the witness, after the expressions he mentions, cannot be admitted as evidence.

Mr. Justice Day.—In this case it does not appear there were any threats or promises used to the prisoner to obtain a confession from him; it seems rather as if the witness had conducted himself with indiscreet frankness.

Mr. Egan.—I submit to your lordships, whether the expressions made use of by the witness were not such as would make an impression of fear upon the mind of the prisoner.

Mr. Justice Day.—I take the distinction to be this, that if a person says to prisoner, if you do or do not do so and so, you will be prosecuted; in this case, the law will not suffer an unfortunate man to be the instrument of his own destruction: or, if he holds out a hope, on condition of the prisoner's making a confession; such a confession shall not be given in evidence against the prisoner. This I take to be the distinction; but in this case the witness seems rather to have put the prisoner upon his guard,

Mr. Bethel.—In the case of the King v. Mac Carty, your lordships will recollect, that evidence of a confession made in a gaol was admitted.

What was the conversation you had with the prisoner when you came to the gaol?—I showed the prisoner to Mac Manus; and Shields said, "is not this a pretty way your comrade has deceived me?" and I said, do not blame him, for it was I that sold you, and little did you know that it was a friend of mine whom you killed: and he said, "how can it be proved that I killed him, when three or four of us fired together?" and I made answer, that there were from ten to fifteen people who could prove that it was by his shot singly the man fell, and so I turned upon my heel and walked off.

John Donnelly cross-examined by Mr. Egan.

I shall not trouble you with many questions. Did you ever see the deceased man?—I never did.

Was he any relation to you?—He was not.

Then how could you say that it was your friend who was killed?—I told him an untruth, and I acknowledge it.

Judge Day.—Was what you mentioned about the ten or fifteen persons also an untruth?—It was.

Why did you tell a lie about the business? Was it to keep you in practice?—No, my lord.

What motive had you?—It certainly was an untruth, and I had no motive whatever.

Michael Smith sworn.—Examined by Mr. Mac Nally.

Do you know the prisoner at the bar?—I have seen him.

Where?—On the day that he was brought up from the country.

Now, Mr. Smith, I ask you, was there any thing held out to the prisoner in your presence, which might induce him to believe that a declaration of any fact would be of use to him, or that might terrify him into a confession?—Not a word.

Where was he at the time he made the declarations of which you are going to give evidence?—In sir William Worthington's office.

In custody?—Yes.

Had there been any information given against him before alderman Worthington?—I believe he was the magistrate who committed him.

I ask you, did you hear the prisoner mention any thing that happened on the 14th July?—I did.

Was sir William by?—No, nor his clerks.

Court.—Then it was a conversation between the witness and the prisoner, *tête-à-tête*?—Not at all, my lord, I asked the officer of the guard who that was, pointing to the prisoner, and he said it was the person who shot the man in Kevin's street.

Mr. Mac Nally.—Do not mention any

thing that another person said, except the prisoner was present?—I heard a watchman ask the prisoner "if he had shot the man?" the prisoner replied, "that he had, and that if it was to do again, he would shoot a dozen more of them."

Where do you live, sir?—In Stoney-batter.

What brought you to sir William Worthington's on that day?—I saw the guard passing by my own house on that day with the prisoner Shields, and I went, through curiosity, to see him; alderman Worthington's office is at the back of the street, and it is only about a hundred yards from my house.

Did you ever know Shields before?—I did not.

Were you any relation to the deceased?—I was not.

Michael Smith cross-examined by
Mr. O'Driscoll.

Did you hear the testimony given by the last witness?—I did.

How many watchmen were by, when you say you heard this declaration of the prisoner?—About fifteen.

Were you ever a yeoman?—Never.

Did you live in Dublin in the year 1798?—I did.

Pray, why did you not arm yourself for the defence of yourself and of your country in that very perilous time?—I was too busy, and could not spare time.

What business do you follow?—I am a baker.

Did you mention this declaration of the prisoner to any one at the time?—I do not think I did; but I was told I had, and was served with a subpoena.

Had you any conversation after getting the subpoena about the evidence you were to give?—I mentioned that I had got it, and carried it to the court of King's-bench, for I was subpoenaed there.

And you swear, you did not tell it to any one?—I did not mention it, except to the family of the house where I live; they received the subpoena, and asked me what it was for.

What did you say?—I received it from a young girl that stands in the shop.

And you immediately knew what it was for?—I did.

You immediately recollected the circumstance?—I never forgot it.

You heard of this trial before?—I did, I was listening to it.

Is your business as great now as it was in the year 1798?—It is greater.

How then could you spare time?—I could better now than I could before; because, I employed a man who could conduct the business, in my absence.

Did you not know yourself to be a material witness?—I did not wish to have any thing to do about the business, unless I was called upon.

And did not your wishing not to be called upon, make you wish to keep it a secret?—It might.

Do you believe, that you did not mention it to any one since the last trial?—I can't say that; I believe I did.

Do you recollect whom you told it to?—I do not.

Must it not have been to a particular friend?—It must.

Have you so many particular friends that you cannot recollect whom you told it to?—Pat. Corigan, I believe.

Did you not say, that you told it to your own family?—Yes; after I got the subpoena.

Was it before or after you got the subpoena, that you told Pat. Corigan?—Before it.

And since the last trial?—Yes.

Where is he?—He is lying sick.

Why did you not recollect it? have you any other particular friend?

Court.—Did you tell your family of it, after you came from alderman Worthington's?—I cannot recollect.

Are we to understand that you did or did not? did you tell it to any other person?—Not that I recollect.

Mr. O'Driscoll.—Do you recollect, whether it was before or after?—I cannot say positively, but I believe it was after the last trial.

Mr. Justice Fox.—How many persons were by, when the prisoner made use of those expressions?—I suppose there might have been 8 or 9.

Mr. Egan.—He said 15 or 16 before.

The Witness.—I meant outside.

Court.—Had you any conversation with any person after the service of the subpoena?—I had, yesterday.

With whom was it?—With a few men who were riding with me in the park.

Mr. Justice Fox.—You said you went to alderman Worthington, out of curiosity; did you ever go there at any other time?—I did.

Do you recollect any particular occasion that you went before upon?—I do not.

Michael Read sworn—examined by
Mr. Ridgway.

Where do you live?—On the Merchant's-quay, No. 5.

What business do you follow?—The linen business.

Did you ever see Shields, the prisoner at the bar?—I saw him on the former trial, and at Mount Pelie-hill with a guard of soldiers.

Where were they taking him to?—To Kilmainham. I asked what he had done, and the prisoner tossed his head in a brava-doing manner, and said "he had only killed a *croppy*; and that there was a time when he would have been rewarded for such a deed."

Did you know the deceased man?—I did not.

Michael Read cross-examined by
Mr. Giffard.

I think you said that you were here at the former trial?—Yes.

Did you tell this to any one?—Yes, I told it to Mr. Segrave.

Do not you believe that he is the principal person carrying on this prosecution?—I do not know.

Do you believe it?—I cannot form a belief.

Had you any conversation with Mr. Segrave?—Yes, I just told him what I mentioned.

Did you see him active about the prosecution on that day?—I did not.

Did you tell him in hopes that it would be mentioned?—I did not; I only told him in the way of conversation.

Were you ever a yeoman?—No.

Pray sir, have you not been rather free in your animadversions on the yeomen, have you not said "that the yeomen were all robbers?"—No; I only said that a great many of them were.

Did you make any other reflections upon the yeomen?—I did. It was observed by a person "that they protected our property;" and I said "that they pillaged more than they protected."

What business did you then follow?—The chandling business.

Mr. Justice Day.—Sir, do you presume to utter in the presence of the Court, calumnies and reflections upon the government of the country? As his majesty's commissioners, we will not suffer you to cast reflections upon a body of men, concerning whom I shall not more particularly observe at present, than to say, they were a respectable body of citizens united for the public safety; and who, in the time of danger and necessity, were the constituted government of the country. If you have been injured by any individual, the law is open to you for redress: but you are not to abuse and vilify a general body of men in this manner.

Mr. Alderman Stamer sworn—examined by *Mr. Greene.*

Did you know Thomas Ryan?—Yes.

Was he in your employment?—He was.

In what capacity?—As wine-cooper.

Do you recollect the 14th of July last?—I do.

Was he then in your employment?—He was.

Can you recollect at what hour in the evening of the 14th of July he was with you?—About 9 o'clock.

Was he sober?—Perfectly so.

Where did he live?—I understand upon the Cross-poddle.

Was he a man of disaffected principles?—He was not: and I wish that the common people were in general as well affected to the

government of the country, and as good and industrious members of society.

Mr. Alderman Stamer cross-examined by
Mr. Bushe.

Do not you believe that there is in the neighbourhood of Kevin's-street a set of very disaffected and turbulent persons?—I believe there are.

Do you not believe that an innocent man might get into a mob assembled for the worst of purposes?—He certainly might. The next day after Ryan was killed I saw a mob about the body in the street; and I saw a man over the body, who said, "it was his wish to kill 10,000 Orangemen."

Do not you believe there were small meetings in several places to celebrate the French Revolution?—I do.

Do not you believe that disaffected and disloyal persons take opportunities of harassing and persecuting loyal persons?—It may be so.

Do not you think they would be glad to destroy loyal persons?—I believe they might.

Mr. Mac Nally.—I wish to ask a question arising out of the cross-examination; whether the prosecution is not separately carried on, by government and crown solicitors? and I wish to ask the witness, whether he has not himself taken some steps to bring this man to justice.

Court.—It is not at all material to the question and the issue to be tried.

Alderman Stamer.—I understand Mr. Kemmis, crown solicitor, is carrying on this prosecution.

[Here the evidence for the prosecution closed.]

EVIDENCE FOR THE PRISONER.

Henry Palmer sworn.—Examined by
Mr. O'Driscoll.

You are a gentleman of the bar?—Yes.

Where did you live on the 14th of July?—No. 45, Bishop-street, which I believe is the ninth house from the corner of Kevin's street.

Do you recollect any thing remarkable having passed on the evening or night of the 14th?—I was brought to the steps of the door, nearer to 11 than 10 o'clock, by a noise about the Fountain, and I can declare, as well as I can estimate by hearing the cheers given by the yeomen in College-green, that there were upwards of 500 persons, and I think that the shouting could be heard distinctly in Stephen's green.

Did their cries seem to be like the cries of women?—No: they seemed to be the cries of men in a state of exultation and security.

Did you hear any of the expressions made use of by the mob?—The distance was too great to hear the expressions; but some of the mob came down Bishop-street, and cried out, "it is their turn now."

Could you see well?—No, it was dark; but I could see a bonfire.

Was it so dark as that you could not see them passing by?—If they were at any distance I could not.

How long before that hour was it that you first heard the shouting?—I believe I found the noise and shouting continually increasing from 8 o'clock to that hour when I went to the door, and the shouting continued until even after the shots had been fired. I heard, as well as I can recollect, three shots; I think my recollection is perfect as to that point, and I do not think that any more were fired; the circumstance of hearing that a man was killed, made me take particular notice of the number of shots that were fired.

Have you heard what was the disposition of the neighbourhood?—I have lived in the neighbourhood since I was four years old, and I have reason to think that it is in a very turbulent state.

Henry Palmer cross-examined by
Mr. Mac Nally.

Were you present at the last trial?—I was not.

What is the reason of your coming forward on this trial?—It is from seeing an account in a newspaper, of the former one, that I have come forward upon this; I did not do it before, because I thought there were 500 people that could give better testimony than I could upon the subject; but on reading that printed account, I thought it my duty to come forward and declare what I knew of this business.

You do not think it any degradation to come forward and give evidence, as you were not examined on the former trial?—I certainly do not.

Do you believe it can be a degradation to the other witnesses who did not appear on the former trial?—I do not; but thus much I will say, that had I attended on the former trial I would have tendered what testimony I could give on the occasion.

The mob passed by your door?—No, I said some persons from the mob.

Was it before the noise was so loud that it could be heard in Stephen's Green?—Certainly not.

At what time were the shots fired?—I believe about half past ten; I heard the words "it is their turn to day," and then there could not have been more than about 5 minutes elapsed, when the shots were fired.

Do you think the words lead to the death of the man?—I think not, I think it was an expression made use of by the rebels, to express their exultation that there were persons to celebrate the 14th of July.

Now would it not be more natural to say, it is our turn to-night, than to say, "it is their turn?"—No; for I conceive that they meant their own party, which they left behind them in Kevin's-street.

You heard a man was killed?—I did.

Do you believe he was shot by disaffected people?—You have a right to my belief; and I

believe the act was not committed by disloyal persons.

Might not shots have been fired about that time which you did hear?—I think I must have heard all the shots that were fired.

I will now ask you a question, and I am sorry I am obliged to mention differences or religious opinions, whether you do not believe that the persons whom the statute calls Papists, and whom the polite call Roman Catholics, in that neighbourhood, have been kept in terror of their lives by the disbanded or disembodied yeomen?—I do not.

Did you not read accounts in the newspapers relative to this business?—Not within this week or fortnight; I think it was in the Dublin Journal I read it.

Then the Dublin Journal does come forward to rub up the recollection of the people?—It was on a Sunday, I was sitting at home by the fire, and borrowed a few old papers to read.

Jonathan Sisson sworn.—Examined by
Mr. Gifford.

Where do you live?—In Bride-street, about 10 or 12 doors from Kevin's-street.

Do you remember the 14th of July last?—I shall never forget it.

What was the cause of its making such an impression on your memory?—Because I saw a man shot.

Be so good as to mention what you saw?—I went on the night of the 14th of July to Mr. Cooper's of Clare-street, and returned back about ten o'clock; but previous to my going, which was about eight o'clock, I saw a crowd at the corner of Kevin's-street, and I asked what it was about; I saw a bonfire preparing at the other side of the Fountain: I asked what it was for, and I was told it was to celebrate the anniversary of the French Revolution, and the downfall of the Bastille. There were not a great number of persons assembled at that time. I had a curiosity to see how this business would end, and I went to Clare-street, and returned, and there were immense crowds assembled who seemed to be turbulent and riotous.

What kind of people?—Of all descriptions of people, men, women, and children.

Were they violent or otherwise?—They did not seem to be well disposed.

Did you hear the cause of this assemblage of people?—To celebrate the anniversary of the French Revolution: the Fountain seemed to be adorned with green trappings: I was afraid to go near, for if any one pointed me out for a yeoman, my life would be in danger: the Fountain was decked with broad green ribbons or flaggers.

Do you recollect any particular cries?—They were crying shouts of victory; and I thought the neighbourhood in such danger, that I went to look for a very active magistrate in the neighbourhood, to whom I had the honour to be known.

Jonathan Sisson cross-examined by
Mr. Greene.

Were you examined on the last trial?—I was not.

Why were you examined on this, and not on that?—I cannot tell; I was ordered to quit the court, and although I was summoned, I was not examined.

Did you call on a magistrate previous to this?—I did not, for I did not think matters would have gone so far.

Did you call on a magistrate on that night?—I did; I went to a magistrate on the Coombe, and I skulked under the Bishop's wall with fear and trembling; and I believe the magistrate did not think himself at liberty to call out the military without information on oath.

Was there not a circuitous rout that you might have taken?—I did, I came back through Patrick's close, and saw the remains of a bonfire, which had been just extinguished, and I was informed that a magistrate had been there, and had caused it to be put out, and the mob to be dispersed.

Your house is nearly opposite to Peter-street?—Yes, it is at the corner of Fawcett's-court.

Did the mob do any thing else?—They made a sally by my house, and a little after I had come back into the house, three shots were fired in this manner. [Here the witness clapped his hands in the manner of a *feu de joie*.] I heard no shots, but what were fired in that manner, and there was no after shot fired. I afterwards saw the man dead; I took hold of him by the hand, and he was entirely dead.

John Dowling sworn.—Examined by
Mr. Bushe.

Where were you on the evening of the 14th of July?—I was going down Bishop-street, and I was informed that there was a tree of liberty in Kevin's-street. I went on and saw the fountain decorated with a three-coloured flag, and Kevin-street was so full that there was not room sufficient for the mob, which extended into Bishop-street. When I got to the corner of Kevin's-street, I thought I should never get away again. There was a Mr. Hamilton, a proctor in the Admiralty Court, with me.

Did you hear any remarkable expressions made use of by the mob?—I heard the word "Orange," but I did not wait, for I thought I should never get away time enough.

Could you have mistaken a parcel of women and children for such a mob as you describe?—I never saw such a number of able-bodied men assembled together in my life.

Did you see a tree of liberty?—I saw a bush tied to the top of the fountain, and it seemed to be with shreds of something green, or ribbons, for there were three strings or ribbons hanging down.

Did you attend on the last trial?—Yes, the entire day.

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Did you hear the evidence given on it?—No, I went out of court.

You were called as a witness?—Yes, but Mr. Egan said that there was no occasion to have me examined. I told him what I could prove.

Notwithstanding the appearance of the mob, would you think yourself justified in firing in among them?—No.

Did you hear any other expressions made use of?—I heard from a gentleman of the neighbourhood that they said, "it was to celebrate French Liberty, which might lead to their own."

Mr. Greene.—You should not mention what any person told you, that is not evidence.

Thomas Smith sworn.—Examined by
Mr. Egan.

You are a respectable gentleman; and it will be the shortest way to hear what you have to say concerning the mob?—I know nothing of what happened on the 14th, but only what happened on the 12th.

I do not think what happened on the 12th, is material to prove now; I thought you were acquainted with what happened on the 14th, or I should not have called you.

Thomas Foote sworn.—Examined by
Mr. O'Driscoll.

Where do you live?—In Kevin's-street.

Where did you live on the 14th of July last?—In Peter Murray's house.

Did you see any thing particular at the Fountain on that night?—I did not go to the Fountain.

Did any thing happen to you in the house?—Yes; I was in the room two pair street-wards and they began to break the windows, and snapped a pistol at me.

About what hour?—About 10 o'clock.

Did you hear any shots fired?—I did; it was after the pistol was snapped at me.

Did you hear the mob in the street?—I did. I kept low down, and looked over the sill of the window.

Did you hear much noise besides the shots?—I did not, for I am rather deaf, and I could not hear it in the house.

Was Murray a yeoman and a Protestant?—He was.

What religion are you of?—I am a Protestant of the Church of England.

Was the number of the mob small or great?—Four or five hundred men.

Thomas Foote cross-examined by
Mr. Bethel.

Pray Mr. Foote what is become of your landlord?—He is gone to live some place else, because his house was attacked and battered.

When did you see him?—About a fortnight ago.

Why, did you hear, was it attacked?—Because it was an Orange house.

Was it before or after Ryan was killed?—It was before.

Do not you think he could give as good an account of this transaction as you?—Was not I a tenant in the house?

Court.—Was there a disturbance before they snapped the pistol at you?—There was a great riot in the street, and a mob going up to the fire at the Fountain, for I could see them from the door, but I did not go near the fire.

You said awhile ago, that the mob going past his house called it an Orange house?—Yes, in the course of the week, I saw them look up, and they said as they were passing, "that it was an Orange house, and ought to be thrown down."

Mr. O'Driscoll.—I will now produce a witness as to what passed at the coroner's inquest; witnesses on this trial swore to certain facts, and we want to discredit them.

Mr. Bushe.—We think it our duty; and we will discredit every witness for the crown, one by one.

*James Brush sworn.—Examined by
Mr. Giffard.*

Do you remember being on the coroner's inquest, on the 15th of July, on the body of Ryan?—I do.

Do you remember that a man of the name of Michael Johnston, was then examined?—I do.

Did you see him here to-day?—I did.

Now can you take upon yourself to say, that he did not give evidence of certain matters, which he this day swore he did give evidence of, on the coroner's inquest?—A Mr. Bell requested me to take notice of the evidence given on the inquest, which I did, and can swear to.

Did Michael Johnston on giving his evidence before the jury, swear, that he heard the prisoner Shields say "By the Holy Ghost I will fire?"—No such words.

Did you find among your notes that he gave evidence of Shields, having said, "I will make a lane through the crowd at the Fountain"?—I do not. I never was more correct in my life than with regard to those notes. The testimony of each witness was read over to him after it was taken, so that no mistake could arise.

Court.—Did he make use of any expression to that effect?—Nothing, but that the prisoner Shields said, "I will go down to the crowd at the Fountain, and clear the way."

Now, with respect to William Lawlor: did William Lawlor swear, on the coroner's inquest, that Shields made use of the expression, "By the Holy Ghost I will have murder"?—Not a word of it.

Nor any thing like it?—Not a single expression like it.

*James Brush cross-examined by
Mr. Mac Nally.*

Mr. Brush, you were sworn as a juror on the inquest?—I was.

And in order that you might give a just verdict, you took notes of the evidence?—Yes.

And if you had not done this, you could not have given the evidence which you have this day given?—Very possibly I might not have remembered it.

And do you not believe, that a man might not remember exactly the evidence he had given after a considerable time had elapsed?—It might be so.

What verdict did you give on that inquest?—"That Thomas Ryan came by his death, in consequence of a riotous mob having assembled in Kevin's-street."

Are you positive that was the verdict?—I am.

Now I will call upon the clerk of the crown to show the verdict; for I am instructed, that there was a verdict of wilful murder against Shields.

Mr. O'Driscoll.—I submit, that the inquest can only be made use of to prove the death.

Mr. Mac Nally.—I should consider myself as ignorant indeed of the law on the subject, if I wanted to produce it as original evidence; I only want to produce it, in order to contradict the evidence of this witness.

Court.—If indulgence were to be given in such a case as this, advantages might be taken, and improper and illegal evidence might be given, although it could not be given *ex directio*.

Mr. Mac Nally.—I think I have a right to it on this principle, that it is the best evidence the nature of the case will admit of, to prove a matter of the greatest importance; we want to prove that the verdict which he swears to is not the verdict that was given on the inquest: now, what evidence can be clearer or more conclusive, than the production of the verdict itself?

Mr. Justice Fox.—Shall we, because the counsel think proper to examine the witness as to the verdict, suffer to be given in evidence, what I have never read of being given, except to prove the death?

Mr. Mac Nally.—Pray Mr. Brush, did you take the questions as well as the answers?—No.

Then, suppose the question was, "did you hear any expression made use of by Shields," and the answer was, "I did, sir," would you merely put down the answer?—No, sir.

I understand the method of taking notes; do you not in fact turn the question into an answer? if a man was asked was he present on the 14th of July, and he answered yes, would you not take it down, "says he was present on the 14th of July"?—I would.

Who cross-examined on the coroner's inquest?—The coroner and Mr. Bell.

Do you know whether he was asked the question, "did Shields shoot Ryan"?—I do not recollect.

Did he tell who shot Ryan?—He said that

Kinch and others went up armed with muskets, but he did not say that Shields shot him.

Did he say he did not know who shot Ryan?—Yes.

And did he not say the same thing here to day?—He did.

And do you not believe he spoke truth?—I believe he did not know who shot him.

Was the substance of the testimony he gave here to day the same as that which he gave on the coroner's inquest?—No, it was not.

Explain to the Court and the gentlemen of the jury in what points it varies?—He said on the inquest that "he saw Shields and nine or ten others, four of whom had muskets; and that he heard Shields say, I will go down to the Fountain and clear the way."

And was not his evidence to-day consistent with that on the inquest?—Some part of it was, and some part of it was not.

Do you think the inconsistency is, that he said things to day which he did not say on the inquest?—Yes.

Do you think his having made an omission is evidence that he committed perjury?—I cannot take upon myself to say so.

Edward Wilson sworn.—Examined by Mr. Bush.

You are a magistrate, and a chief peace-officer?—Yes, for the Work-house division.

Were you in Kevin's-street on the evening of the 14th?—I was; a gentleman called upon me, and told me that there were riotous people assembled, and that there would be mischief. I took a peace officer with me, and when we came into Kevin's-street, I saw a fire at the Fountain burning furiously, and a great crowd of people assembled at it, and I turned back, in order to get some watchmen to assist and to scatter the fire with their poles.

Court.—Was it through fear of the crowd?—It was not my lord; it was to get watchmen with poles to scatter the fire.

Mr. Bush.—Was the mob considerable?—There were a great many people; on coming to Patrick-street with the watchmen, we found another fire, as it was the nearest I waited to have the fire scattered, and to disperse the mob; when we had done there we saw another in Patrick's-close, I took the men down and had it also scattered, the mob pelted stones at us, and some of the stones went very near me.

Did you return to Kevin's-street?—I found the mob so numerous and tumultuous, that I could not disperse them without more assistants, but I placed what men I had between the Puddle and Kevin's-street, in a narrow place, in order to prevent the two mobs from joining; the mob had tattered one house on the Puddle.

Was it a yeoman's house?—I believe it was.

Did you hear any expressions made use of

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by the mob?—I do not recollect particularly, several persons were taken up by the constables under me.

Did any thing happen on the 12th or 13th?—I heard several windows were broken by the mob. I saw them after being broken.

What description of people were they whose houses were broken?—All yeomen; and several persons were taken up who had clubs and sticks under their clothes.

Were the lives of loyal men, and yeomen in danger?—On my oath I do believe they were; for I saw the houses of yeomen the windows of which were broken.

The Rev. Foster Archer sworn.—Examined by Mr. O'Driscoll.

Do you know William Shields, the prisoner at the bar?—Yes.

How long have you known him?—Twelve or thirteen years.

What have been his conduct and character during that time?—I never heard any thing to his disadvantage; he was apprenticed from a school of which I was a governor, in Cork, and I heard that he had raised himself from the station of a journeyman to that of a master nailer. I naturally made inquiries concerning his situation and conduct in life when I came to Dublin.

Where you in Dublin on the 13th?—I was.

Had you an opportunity of seeing what was the state of Kevin's-street on that day?—I was going home at past four o'clock in the afternoon, for I live in the neighbourhood of Clanbrassill-street, and I saw a great number of people in Kevin's-street and Bride-street, and I asked a man, who was detached from the crowd, what was the matter? and he made answer, that they were hunting an Orange-woman, who was in that house pointing to a house at the corner of Kevin's-street; I saw a person, who appeared to be the master of the house, parlying with those who were at the door, in order to protect the woman, and in the mean time a woman was let out at a side door. I heard one man say "hy Jesus, we will not leave one of them in the neighbourhood, not even the long nailer." I asked him who was the long nailer? and he said "Shields." I went down Kevin's-street, and saw another mob, and went on. I saw four mobs in all. I turned up New-street, and called on justice Bell, and I took the liberty to suggest, that he ought to take out a few soldiers in order to disperse the mob, for I did think that some evil consequences would be the result of what I had seen.

The Rev. Foster Archer cross-examined by Mr. Greene.

I recollect, sir, you were examined as a witness on the former trial?—I was.

I believe on that occasion you were only examined as to character?—That was all.

Did you not think it was a material fact,

that you heard expressions of the nature you mentioned on the 13th, particularly with regard to the long nailer?—I did.

Did you mention a syllable of it?—I did not.

How long is it since your acquaintance with the prisoner's character commenced?—From the year 1786 or 1788; I cannot exactly say.

Had you any opportunity of knowing his character; but by the inquiries you made?—It was not through curiosity, but because I was interested with regard to his welfare that I made the inquiries, and I was glad to hear that he had gone on so well in life, for I knew his parents had been very poor. My family, whenever there were nails wanting, got them from him, and I often heard of him.

Did you not hear that, previous to the present transaction, he was in custody on a charge of riot?—I never heard of his being taken up but on the present charge.

Mr. *Greene*.—I have nothing farther to ask you, sir, you may go down.

Daniel Fearon sworn.—Examined by Mr. *Gifford*.

Where do you live?—In Portobello.

Did you hold a commission in the yeomanry?—Yes, several commissions.

Do you know the prisoner at the bar W. Shields?—I do.

Be so good as to inform the Court of his general character?—I had the honour of bearing a commission in the Loyal Dublin infantry, and Shields belonged to the same corps; I have known him from about the time the rebellion commenced, and I have known him to do the duty of a yeoman, and conduct himself properly.

As to his general character?—I believe he is as good and loyal a subject, and as industrious and useful a member of society, with regard to his station in life, as any one in the community.

[Here the Evidence for the Prisoner closed.]

SUMMING UP.

Mr. Justice *Day*.—Gentlemen of the Jury: the prisoner William Shields, stands indicted for that he, on the 14th of July last, at Kevin's-street, did commit wilful murder upon the body of Thomas Ryan, by discharging at him a gun, charged with powder and ball. The death has been incontestably proved before you; and that the man was killed you can have no doubt. The first question for you now, gentlemen, is, whether the prisoner is the author of the homicide which has been proved, or whether he was concerned with others in the commission of it, in the nature of an accomplice. The next is, whether (if it shall appear to you to be a clear and undoubted fact that he committed the homicide, or was concerned with others in the commission of it) he has offered any thing which can jus-

tify or alleviate the act; and, gentlemen, before I go into a detail of the particulars of the great body of evidence which has been given upon the table,—for I cannot, on account of the very great impression my mind has received, avoid digressing a little from the immediate line of it; I find it is a duty incumbent on me (not meaning that the prisoner is responsible for the consequence to the public peace), to express the deep affliction and horror I feel at the cause of this fatality. We find a religious war raging in the heart of the metropolis, among men, who, if they appeared to have the least spark of religion in their hearts, would have acted in a manner totally different from that in which it has appeared they have acted. The Divine Master and Father of Religion endeavoured to inculcate humility, and obedience to the laws and constituted authority, and all those virtues which adorn a civilized state of society, and distinguish it from a state of savage nature; and the great object of his descent from Heaven was, to restrain by his precepts and example the brutal nature of man, and to render him fit to enjoy the social rank in society which he was ordained to fill. But men must be destitute of every religious principle, who could blaspheme, and under the pretence of supporting religion, commit the most detestable and abominable crimes upon one another as if they could, by such conduct, hope to find favour with God. And it is very unfortunate for this country, that it has been disturbed by men who pretended to religion, and yet have evinced their total want of it, by committing the most atrocious murders; and it is also to be lamented, that the police of this city should be so negligent of their duty, as to suffer such riots to rage for two or three days; for if they had paid attention to the duties of their office, this fatality never would have happened. I shall now, gentlemen, enter into a detail of the evidence, and I am glad to find that some of you have taken notes of it.

[Here his lordship entered into a minute and impartial detail of the evidence, observing and discriminating with great ability and precision on the principal points, as they appeared for or against the prisoner.]

You cannot, gentlemen, but feel the striking contradictions that appear in the evidence given on both sides; and if you believe the witnesses for the prisoner, there must appear to you very great inconsistencies on the part of the witnesses for the crown.

It appears that Kevin's-street, and the neighbourhood of it, on the 12th, 13th, and 14th, and 15th of July last, was in a state of the most alarming and dangerous disorder. No law seemed then to prevail, but the law of strength—and I do not recollect that there was any attempt made to quell those riots, by the extensive authority, until the 14th, or to restore the safety or tranquillity of the neighbourhood. The reason why there was not, I

shall not now attempt to investigate. The inhabitants of the neighbourhood seem to have been left, in a great measure, to themselves, to fight on or settle the difference between them, just as their inclination might prompt them to do: and in a case of necessity every man is called upon to protect himself in the best manner that he can; and if a man is found armed, under those circumstances, it is not an unlawful act. That there was such a necessity existing, you can have no doubt, if you believe the witnesses on the part of the prisoner; but, if you believe the witnesses on the other side, any defence grounded upon circumstances of that kind, is entirely out of the case. If however you believe the witnesses for the prisoner, it is perfectly natural that the yeomen, of which description of persons the prisoner was one, should arm themselves for the protection of their own persons, and for the safeguard of their houses. It has appeared in evidence, that one of the witnesses for the crown, when on the coroner's inquest, swore that he had heard the prisoner Shields say, "that he would go to the Fountain and clear the way." It was very justifiable in those yeomen who had become obnoxious to persons of another description, that they should endeavour to disperse the mob who were assembled, for they were not obliged to wait for an actual attack upon their persons, and if such an attack was necessary for their justification you have the evidence before you, if you believe the witnesses on behalf of the prisoner, that such an attack was made (by firing a pistol at one of those persons) as would fully justify them sallying out to defend themselves. If the case rested upon this justification, it would be a simple case for you and the Court to decide upon; but it appears that these yeomen went farther, and fired upon the mob, without any absolute necessity for so doing. No killing can be justified but where there exists an absolute necessity for committing the act, and evidence of that kind must be produced by any person to whom homicide is brought home, in order to justify it or reduce it to manslaughter, or else he must show, that it was done by misfortune without any mischievous intent; for the law is, that homicide is murder unless the person charged with it can produce evidence to justify or mitigate it.

In the present case, it does not appear that the mob made any attack upon the armed party, for then they would have fired in their own defence, but this case does not seem to be excusable in this way, the shots seem to have been fired (*quasi timore*) as if through fear that they would have been attacked, for it seems to have been a step taken without any necessity.

If we could ascertain the man who committed the homicide, we could not hesitate to say, that the homicide in this case amounted to murder. You will consider what is the evidence in this case, and what degree of credit can be given to the witnesses for the crown, who have taken upon themselves to swear that the prisoner was the person who fired the fatal shot: you will observe the gross contradictions of those people to one another, and the manner in which they gave their testimony: they have stated, that a great enmity subsisted between the parties, and that is a circumstance also for your consideration, as to the credit the witnesses are entitled to.

Those yeomen seem to have armed themselves for a lawful purpose, and they do not seem to have gone out with a felonious intent, but for the purpose of endeavouring to quell the disturbance and restore public order; if so it was a laudable and commendable purpose, and they are not all answerable for an act done by an individual of that party, unless it shall appear that they were concerned with him in the commission of it. In the execution of this spirited and laudable purpose a felony was committed, and I shall not hesitate to call it murder; but it was committed only by the one man who fired the fatal shot; if it appeared that the muskets which were fired by the others of the party had been loaded with mortal materials, there could not be a doubt of their guilt, but no proof of that kind has appeared; it has rather appeared by the evidence, that they were not loaded with mortal materials, or much more mischief would have ensued.

It is for your consideration, gentlemen, whether he fired the fatal shot or not, and what credit is to be given to the persons who swore positively that the prisoner committed it.

If, gentlemen, you believe that the prisoner was the person who fired the fatal shot, you will find him guilty of murder. But, if you believe that he came there with others armed to make the party appear more formidable, without any felonious intent, and that it was not he who fired the fatal shot, you ought to acquit him.

And, gentlemen of the jury, if, upon duly weighing the evidence given on both sides, you shall entertain a reasonable doubt as to the identity of the prisoner, he is entitled to the benefit of that doubt, and you will in such case give a verdict in his favour.

The Jury retired for half an hour, and returned with a verdict of acquittal.

The prisoner was immediately discharged.

TRIALS FOR THE IRISH INSURRECTION.

654. Proceedings on the Trial of EDWARD KEARNEY for High Treason; tried before the Court holden under a Special Commission at Dublin on Wednesday August 31st: 43 GEORGE III. A. D. 1803.*

PRELIMINARY PROCEEDINGS.

ON the night of Saturday the 23rd of July 1803, a rebellious insurrection broke out in the county and city of Dublin; the most flagitious outrages were committed, and the right hon. lord Kilwarden, chief justice of the King's bench, together with his nephew the rev. Richard Wolfe, and several others were barbarously murdered by a tumultuous assemblage of people armed with pikes and other offensive weapons.—The insurgents however were soon defeated by the rapid and courageous exertions of the garrison and yeomanry of Dublin, and a number of prisoners having been taken, a special commission of Oyer and Terminer for the county and city of Dublin, passed the great seal for the purpose of trying them.

The commission was directed to the right hon. lord Norbury, chief justice of the Common Pleas, William Downes, esq. second justice of the King's bench, Mathias Finucane, esq. second justice of the Common Pleas, Denis George, esq. second baron of the Exchequer, and St. George Daly, esq. third baron of the Exchequer, appointing them, or any of them, justices and commissioners of Oyer and Terminer, within the county of the city of Dublin, to hear and determine all treasons, misprisions of treasons, murders and manslaughters committed in said counties, or either of them.

Under this commission, the court was opened by the hon. Mr. Justice Downes, the hon. Mr. Justice Finucane and the hon. Mr. Baron Daly, at the Sessions House in Green street, on the 24th day of August 1803, when the following grand juries were sworn:

FOR THE CITY.

A. B. King, Foreman,	Godwin Pilsworth,
Arthur Stanley,	Mark Bloxam,
Nathaniel Craven,	John Hone,
Hans Blackwood,	Joseph Ashley,
Joshua Pouden,	Wm. Walsh,
Arthur Guinness,	James Hamilton,
George Carleton,	John Oldham,

* From the report of William Ridgeway, esq. barrister at law.

W. Colville, jun.
Mark Magrath,
William Sparrow,
Jos. Holmes,
Richard Spear,

Richard Wilson,
Wm. Leet
Francis Hamilton
Roger Horner, esqrs.

FOR THE COUNTY.

F. J. Falkiner, Foreman,
John Finlay,
Thomas Baker,
Rob. Alexander,
Sir John White, Kt.
Alex. Kirkpatrick,
Thomas Connor,
Christophilius Clinch,
Joshua P. Meredyth,
John Garnet,
John Exshaw,

Wm. M. Mason,
Richard Evans,
Wm. Cowley,
W. B. Swan,
John Carleton,
George Grierson,
P. H. Godfrey,
Wm. Rawlins,
James Williams,
Robert Leigh,
Wm. Long,
Chs. Thorpe, esqrs.

Mr. Justice Downes—(Lord Norbury being detained on circuit) delivered the following charge:—

Gentlemen of both these Grand Juries;—You are called on to execute an important duty to your country,—that of a grand inquest to inquire on behalf of his majesty, whether sufficient grounds exist to put upon their trials any of the prisoners in the gaols of your counties respectively, against whom bills of indictment shall be laid before you.

The commission under which we sit, and which you have heard read, is substantially the same with that under the authority of which you have been used to see the king's judges administer the law in this place, where most of you have often given your assistance in the same situation in which you are now called on to act. With respect therefore to the general nature of your duty in inquiring into ordinary offences, you do not stand in need of any instructions or advice from this bench.

But yet I feel that under the circumstances in which we are called upon now, to execute the duties imposed upon us, it may be not altogether useless that I should address a few words to you.

You are called together as grand jurors at an unusual time; the offences which will come before you, and which will form the principal, if not the only objects of your inquiry are of an uncommon nature: the pub-

lic peace has lately been violently broken, and that so notoriously, that no man is ignorant of it; and with that degree of audacity that it has induced his majesty's government to lose no time in having the circumstances which attended that outrage judicially inquired into—and it has been thought proper, as soon as the minds of the public should be composed and tranquillized after what has happened, to bring before you the inquiry upon which you are now to enter.

From an inspection of some of the informations, which have been laid before me, I am led to believe, that indictments will be sent up to you, charging some individuals with the greatest crime known to the law—that of high treason.

For very many years, and until a very short time before the late rebellion broke out, this offence was unknown in this country; peace and internal tranquillity, with their natural consequences, public prosperity and rapid national improvement, gave us grounds to hope that this island (in many respects peculiarly favoured by Providence) would have continued to be conscious of the blessings it enjoyed, and anxious to preserve them. But unhappily some artful and wicked men, under the fallacious promises of impossible benefits, and suggesting schemes of fancied improvements of the constitution, which they knew to be impracticable, and did not wish to realise, concealed for a time under such pretences the design of utterly destroying the legal government of the country, and substituting in its place the wretched anarchy, inconsistent with all social happiness and genuine liberty, which they call a republic, founded on the model of that ever-changing system adopted in France, which has occasioned more misery than history has ever attributed to any other conspiracy against the happiness of mankind.

Such men, meditating the destruction of every thing that was dear to us, as subjects of a free country, enjoying more rational liberty than any other on the globe, except Great Britain, and equal in that respect with her, excited, prepared, and matured a dreadful rebellion, and did not hesitate to call in the aid of a foreign enemy, and with equal folly and wickedness expected that they should themselves obtain that power of which the state should be deprived.

The exertions of his majesty's government, aided most powerfully by his loyal subjects, speedily proved that the attempt was vain—the open rebellion was crushed and the foreign enemy defeated—firmness and lenity were in their turn applied as the circumstances seemed to the government to require, and tranquillity was apparently restored. Among the measures wisely resorted to on that occasion, an act of general pardon with some few and very proper exceptions was enacted—this wise and humane measure might naturally have been expected to have had great influence on the minds of a deluded

multitude; and doubtless in a great number of instances it had, and notwithstanding the outrages which will be the subject of your inquiry, no doubt can be entertained, that very many of those formerly implicated in the guilt of rebellion, have availed themselves of his majesty's mercy, and retired into peace and industry; and I believe there is good ground to expect that many of that description from a thorough conviction of the falsehood of the pretences by which they were formerly seduced, by the experience of the misery occasioned by the outrages committed, and by the observation of the consequences that the baneful principles disseminated among them had produced in other countries where they unhappily had prevailed; would be found ready, if the necessity should arise, to give to the king's government effective aid.

But unhappily I fear from the informations that have been laid before me of witnesses who will be submitted to your examination, it will appear that there still exist wicked and designing men, enemies to public tranquillity, capable of exciting a furious multitude to every enormity; and it will be for you to consider the facts of the outrages committed, with what object they have been accompanied, and whether any and which of the prisoners have participated in those facts and in that object. It is my duty to make some observations on the general nature of the facts charged in those informations, and to state to you the law as applicable to them, in the different aspects in which those facts may be viewed; and in doing so I shall not advert to the particular case of any individual.

It is probable that indictments for high treason may be sent up to you against some of the prisoners in custody, grounded on the statute of 25th Edward 3rd, upon which the law of treason in this country rests; those branches of the statute more particularly necessary to be adverted to, are those which declare it to be high treason where a man doth compass or imagine the death of our lord the king, or secondly, if a man do levy war against our lord the king in his realm.

Those two clauses of the statute are the most material to be adverted to on this occasion—there is however another clause of that statute which by possibility may come under consideration; and that is (in the words of the statute) if a man be adherent to the king's enemies in his realm, giving them aid and comfort in the realm or elsewhere. That offence so described is, as well as the other two I have mentioned, by that statute declared to be high treason. I do not know whether it be intended to send for your consideration any indictment grounded on that clause in the statute, it may be sufficient to state to you upon it, that any act whatever by which the public enemy is aided or encouraged,—any act by which the enemy is strengthened and the king's hands are

weakened, if done with that intention, is an act of adhering to the king's enemies.

In the first species of treason, that of compassing or imagining the death of the king—it is obvious, that the law considers the crime to be the *wicked intention and imagination of the heart*. But in this, as well as the two other species of treason which I have mentioned, some one or more acts of the prisoner done in execution of his traitorous purpose must be charged by the indictment, and *proved in evidence*; these are called overt acts.

So that although the law makes the treason to consist in the *imagination of the heart*, yet it is wisely provided that no man shall be tried for *secret intentions only*, but that the crime of which he is accused, shall be manifested by *acts* done with the view of effecting his traitorous design; and those *acts* must be charged in the indictment, that the prisoner may be apprized of the nature of the case intended to be proved against him, and thus be enabled to prepare his defence. I must however observe that although many overt acts of treason be charged in the indictment, yet the satisfactory proof of one of them is sufficient to convict the prisoner.

With respect to this species of treason,—that of compassing or imagining the death of the king, it ought also to be observed to you that this offence is not confined to actions and attempts of the more gross and flagitious kinds, to assassination, or attempts directly and immediately aiming at the life of the king; the law (for the sake of the public) extends its care of the king's personal safety to every thing willfully and deliberately done whereby his life may be endangered, thus entering into measures for deposing the king, or to get his person into the power of the conspirators; these offences are overt acts of treason, for (says an able judge and one of our best writers on the subject) experience hath shown that between the prisons and the graves of princes the distance is very small.

But offences still less immediately personal to the king, have been justly and rationally held to fall within the same rule of law, as having a tendency (though not so immediate) to the same end. And therefore entering into measures in concert with foreigners and others in order to procure an invasion of the kingdom; or going into a foreign country for that purpose, or even intending to go abroad for that purpose and taking any steps in order thereto, have been held overt acts of this species of treason, of compassing the king's death; so also levying war against the king, though a distinct treason in itself, may also be laid as an overt act of the species of treason I am speaking of, compassing the king's death, because it has a manifest tendency to the same possible fatality.

It is no objection to the doctrine of treason in compassing the king's death, that the facts happened in this country where the king does not personally reside, and that the same facts

which in England might be reasonably supposed to involve the person of the king in actual danger, cannot be said, happening here, to expose him in the same degree to the same mischief.—This is no manner of objection to the application of the doctrine here; for the same wicked intention of the heart which the law meant to punish, and to protect the king and all his subjects from, exists in both cases; the locality of the act may make the ultimate effect of destroying the king's life more or less probable, from a consideration of the distance from his person at which the overt act is committed; but it is not the different degrees of probability of that fatal effect following, that constitutes, or can vary the crime; the fatal effect of the overt act, may be produced through a progress of circumstances more or less numerous or complicated on account of the distance, but still its tendency is the same, and nothing could be urged on that ground that might not be as strongly urged with respect to overt acts happening in Scotland or in Wales—and indeed it has never admitted of a doubt.

But that branch of the statute which would be found perhaps most naturally and directly (in the minds of untechnical men) to apply to the facts stated in the informations, is that of levying war against the king in his realm.

This species of treason will also require an observation or two, which I shall, as I have upon the other species, take care to give from an authority as highly respected as any in the law, and which will admit of no doubt.

All insurrections in order to effect innovations of a public and general concern, by an armed force, are in construction of law high treason, within the clause of the statute of levying war against the king; for although they may not be directly levelled against the person of the king, they are as that writer observes, against his royal majesty and authority; and besides they have a direct tendency to dissolve all bonds of society, and to destroy all property, and all government too by numbers and an armed force.—So, insurrections for redressing of national grievances, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest; risings to effect these ends by force and numbers, are, by construction of law within the clause of levying war, for they are levelled against the king's crown and dignity.

The purposes of the rising, to bring it within this branch of the statute, must be some general public object: not one in which the parties have a *particular and special* interest, as where a rising takes place for an object affecting only those concerned, or a particular set of men, as for pulling down particular inclosures, or to remove nuisances supposed to affect the parties themselves,—or even to destroy a particular person, these and the like *particular* objects enforced tumultuously and by armed numbers, though highly crimi-

nal, and subject-to severe punishment, are not high treason.

But if you should find from the evidence that will be laid before you—a rising by armed numbers, to enforce a general public object by arms, unquestionably it is high treason within the clause of levying war against the king.

If you should find that numbers of men have assembled, have armed themselves and have proceeded to acts of force and violence, having one general object, that of destroying the king's government and lawful authority, —undoubtedly that offence is high treason; every person so assembling and acting is guilty of levying war against the king.

If the evidence shall show you that such an armed multitude have assembled, it will be your duty to consider the object they had in view—and to this end you will weigh the evidence you shall receive.

The objects of men are to be discovered by their words and their actions;—declarations of such persons so assembled, at the time, become material evidence against them, and if made publicly, and openly among their confederates, and in their hearing, may be given in evidence against the whole of the party so assembled.

So also writings and printed papers in possession of such persons, and plainly connected with the design imputed to them, are also material evidence for your consideration; so also, the conduct of the insurgents during and previous to the fact, will of course furnish matter important for your consideration in discovering the object of the insurrection. If you shall find individuals coming from great distances to the perpetration of this outrage, if you shall find numbers of them living at great distances from each other; previously unacquainted with each other, and connected only by the common object of the rising;—if the evidence shall satisfy you, that collections of arms of any kind, of ammunition, military ensigns and uniforms have been made, for the use of those insurgents;—if it shall appear to you that such collections must have required considerable time and considerable expense to effect;—if you shall find that they were cautiously concealed until the moment they were to be used:—these will be material facts, and greatly tend to elucidate the object of such insurrection, and to show that it was for a purpose of great atrocity, magnitude and moment.—And you will judge whether it were not for some general object, and if so, whether such acts have been done with a view to the object which will be charged in the indictment. If the evidence shall satisfy you of that, then it becomes a case of high treason; and with respect to every man whom you shall find ground to charge as being engaged, or in any manner participating in those acts, it will be your duty to find the bill against him; which, as you well know, is not decisive of the question of his guilt, but is a

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solemn declaration of yours, upon due inquiry, that there is ground to put him on his trial for the fact.

But if, on the other hand, these facts should not be satisfactorily established in evidence—if though an insurrection should be shown to you to have existed, yet if the object of the insurgents should not appear to be of that general nature that I have described to you, or that shall be charged in the indictments sent up to you, it will be your duty to ignore any bill containing a charge of high treason; even though in the course of that dreadful evening (the events of which you will have to consider) murders of the most horrid description were perpetrated, and (if the informations are true) not in the heat of a conflict however unwarrantable and flagitious, but before this infatuated multitude had met with any resistance, before there was time to oppose their fury, unarmed and unresisting individuals fell cruelly mangled, and among them one whose memory will long be dear to this country, in whose service he had passed many of his best years devoted to its interests, whose loss cannot be repaired, who in the last moments of his existence felt, and while utterance remained expressed that veneration for the law, and those sentiments of mercy even towards his murderers, which had through life governed his actions: of him I shall say no more; my purpose in addressing you from this place is not to excite your feelings or my own, but to call upon you for the cool exercise of your judgment in considering the case before you, and to conjure you, not because great atrocities have been committed, rashly to conclude that the persons charged have participated in the guilt. I am persuaded that you will (as you ought to do) weigh deliberately and dispassionately the testimony that will be produced to you.

Before we separate I think it right to mention, that lamentable as the events of that unhappy evening were, yet some consolation is still to be derived from them,—they have been a cause of the strength of the country being prodigiously increased, the king's loyal subjects have redoubled their exertions, roused by the calamities that we deplore; and have with a zeal and alacrity that cannot be exceeded rallied round the government with a strength of support that I trust will be irresistible.

But still, gentlemen, it will be incumbent on you, when you shall be relieved from the duty you have undertaken in this court, not to relax in your endeavours to preserve the public peace;—it concerns every man to lend his best aid to the support of the king's government in times like these. I trust the magistrates both of the county and city will unceasingly attend to the execution of their duty—there is a great and honourable trust reposed in them—much must depend on their exertions, and I trust that they will be found active, vigilant, and zealous.

You will proceed to consider the bills that are ready to be laid before you, the Court will sit for some time now to receive from you such as you shall have disposed of, by finding or ignoring as the circumstances in evidence shall warrant you to do,—and afterwards adjourn to a future day to receive such bills as you shall not have this day disposed of.

In some time, the grand juries returned bills against several prisoners, who were immediately brought to the bar, and informed that indictments for high treason were found against them, and they were called upon to name their counsel and agents, to be assigned to them, which they accordingly did.

Felix Rourke named Mr. Curran and Mr. Ponsonby as Counsel, and Mr. Wm. Lewis Walker as Agent.

John Killen named Mr. Curran and Mr. Mac Nally as Counsel, and Francis Flood as Agent.

John Mac Cann, alias Mac Kenna, named Mr. Curran and Mr. Mac Nally as Counsel, and Mr. Flood as Agent.

James Byrne named Mr. Mac Nally as Counsel, and Mr. Leonard Mac Nally Agent.

Walter Clare said he had no means to get Attorney or Counsel.

Donnelly named Mr. Mac Nally as Counsel, and Mr. L. Mac Nally Agent.

Nicholas Farrell, alias Tyrrell, named Mr. Mac Nally as Counsel, and Mr. L. Mac Nally Agent.

Laurence Begley, alias Bayly, named Mr. Mac Nally as Counsel, and Mr. L. Mac Nally as Agent.

Michael Kelly named Mr. Mac Nally as Counsel, and Mr. L. Mac Nally Agent.

Martin Bourke named Mr. Mac Nally as Counsel, and Mr. James Curran Agent.

Edward Kearney, alias Carney, named Mr. Bethel as Counsel, and Mr. L. Mac Nally Agent.

John Begg named Mr. Mac Nally as Counsel, and Mr. L. Mac Nally Agent.

Thomas Maxwell Roche named Mr. Mac Nally as Counsel, and Mr. L. Mac Nally Agent.

Patrick Maguire named Mr. Curran and Mr. Mac Nally as Counsel, and Mr. L. Mac Nally Agent.

Joseph Doran named Mr. Mac Nally as Counsel, and Mr. L. Mac Nally Agent.

Owen Kirwan named Mr. Curran and Mr. Mac Nally as Counsel, and Mr. L. Mac Nally Agent.

The Counsel and Agents thus named were accordingly assigned, and a general order made that they should have access to the prisoners at all reasonable hours.

Upon the motion of Mr. Attorney General, Walter Clare was again put to the bar and asked, whether he would name any counsel or agent.

He said, he was a poor labouring boy, and had no means; that he worked with Mr. Roe, of Marrow-bone-lane, and was taken up on suspicion, and knew nothing of the matter.

Mr. Attorney General said, it would be right to inform the prisoners, that their trials would be proceeded upon on the 31st of August, inst. and in the mean time they should be served with copies of their indictments.

The prisoners were all desired to be ready for trial upon the 31st.

The Court adjourned to Monday, the 29th of August.

Monday, 29th August.

The Court sat pursuant to adjournment, when a Bill of Indictment for High Treason was found against Dennis Lambert Redmond, who was brought to the bar, and named Mr. Curran and Mr. Mac Nally as Counsel, and Mr. L. Mac Nally Agent.

Edward Kearney was brought to the bar at his own desire to name a second Counsel, when he named Mr. Charles Ball.

Walter Clare was in like manner brought to the bar, and he named Mr. Mac Nally as Counsel, and Mr. L. Mac Nally Agent.

Wednesday, 31st August, 1803.

The court was opened pursuant to adjournment

Judges present, Lord Norbury, Mr. Justice Finucane, Mr. Baron George, and Mr. Baron Daly.

Edward Kearney was brought up, and arraigned upon the following indictment

County of the City of Dublin, to wit. } The jurors for our lord the king upon their oath present that Edward Kearney late of Thomas-street in the city of Dublin and in the county of the city of Dublin yeoman otherwise called Edward Carney a subject of our said lord the King not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and intending the peace and common tranquillity of this realm to disquiet molest and disturb the government and constitution of this realm to change subvert and alter and our said lord the king from the royal state title honour power imperial crown and government of this realm to depose and deprive and our said lord the present king to death and final destruction to bring and put he the said Edward Kearney otherwise called Edward Carney on the twenty-third day of July in the forty-third year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly

and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death and that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations and compassings aforesaid he the said Edward Kearney otherwise called Edward Carney as such false traitor aforesaid on the said twenty-third day of July in the said forty-third year of our said lord the king, at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did conspire confederate and agree to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this kingdom

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Edward Kearney otherwise called Edward Carney as such false traitor aforesaid in further prosecution of his treason and treasonable purposes aforesaid did arm himself with and did bear and carry a certain weapon called a pike with intent to associate himself with divers other false traitors armed with guns swords and pikes whose names are to the said jurors unknown for the purpose of raising levying and making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king within this kingdom.

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the King with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Edward Kearney otherwise called Edward Carney as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the said jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said Edward Kearney otherwise called Edward Carney against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

And the said jurors of our said lord the king upon their oath do further present that the said Edward Kearney otherwise called Edward Carney being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said sovereign lord the King and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said sovereign lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom and in order to fulfil and bring to effect the said traitorous compassings imaginations and intentions last mentioned of him the said Edward Kearney called Edward Carney he the said Edward Kearney otherwise called Edward Carney afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of him the said Edward Kearney otherwise called Edward Carney against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

The prisoner pleaded Not Guilty; and upon being asked was he ready for his trial? he said he was.

Felix Rourke, John Killen, J. M'Cann, Thomas Maxwell Roach, John Begg, Owen Kirwan, Walter Clare, James Byrne, and Martin Burke, were severally arraigned and pleaded Not Guilty, and said they were ready for trial.

Edward Kearney was then put to his challenges; and the panel being called over, the following jury was sworn, after eight peremptory challenges by the prisoner, and five set aside on the part of the crown:

Richmond Allen,

John Duncan,

Robert Henry French, Godfrey Byrne,
James W. Fitzgerald, Richard Davidson,
William Snell Magee, Thomas Kennan,
John Halpin, William Standford,
William Moore, Thomas Kinder.

Counsel for the Crown.

Mr. Attorney General.—*Standish O'Grady*; [afterwards Lord Chief Baron of the Exchequer.]

Mr. Solicitor General.—*James Maclelland*; [afterwards a Baron of the Exchequer.]

Mr. Plunkett.

Mr. Mayne; [afterwards a Judge of the Common Pleas.]

Mr. Townsend.

Mr. Ridgeway.

Mr. O'Grady.

Agent.—Mr. Kemmis.

Counsel for the Prisoner.

Mr. C. Ball.

Mr. Bethel.

Agent.—Mr. L. Mac Nally.

Mr. O'Grady opened the Indictment.

Mr. Attorney General.—My lord, and gentlemen of the jury:—The prisoner, who is now brought before you for trial stands charged with the crime of high treason; and it will be your duty, gentlemen, in passing sentence upon him to discharge your minds altogether of every thing you may have heard upon this subject, previous to your being sworn upon his jury. Confine your consideration to the evidence which shall be now laid before you, and give to the prisoner the full and impartial benefit of those laws, which we accuse him of having endeavoured to subvert.

Gentlemen, the prisoner stands indicted upon the statute 25th Edward III. and the indictment is founded upon two clauses of the statute—first, for compassing and imagining the death of the king—and secondly, for levying war against the King.

Gentlemen, in support of the first count of the indictment, there are three overt acts charged, as the means by which the prisoner has disclosed his traitorous intention. The first overt act is, that he did agree and conspire to compass and bring to effect the death of the king; secondly, that he armed himself for the purpose of levying war against the king and his troops; and thirdly, that he actually did levy war.

The second count is grounded upon the clause for levying war; and in support of that, there is one overt act, stating that war has been actually levied;—and upon the whole of the case, if you, gentlemen, shall be satisfied, that the prisoner took a part in, and gave aid to the insurrection, which was traitorous in itself, you will be bound to find him guilty; because, if it shall appear,—and I address you in this respect subject to the correction of the court,—that the insurrection of the 23d of

July last was a rebellious and traitorous insurrection, every person who participated in it became, in consideration of law, guilty of the crime, though not previously instructed as to the motives and objects of that insurrection: because when a number of persons join each other in committing illegal acts, they are exposed to all the consequences which follow from them, and are guilty of the crime of which their associates are guilty. If the wisdom of the law did not so ordain it, we should all be in a lamentable situation; for it is well known to every man who hears me, that those who are generally employed in executing outrages of this nature, are not the persons who originally conceived the design.

In stating to you the particular circumstances of this case, so far as they relate to the prisoner it will not be necessary for me to enter into a very minute or very accurate survey of the progress of disaffection in this country. But, certainly, it is matter of some consolation to know, that the conspiracy which broke out into open insurrection and rebellion on the 23rd of July last, was confined within much narrower limits than the promoters of it are willing to inculcate. Whether we consider the numbers who have embarked in the enterprise, their wealth, or their character, it will appear contemptible in the extreme. So far as it had for its odious object the subversion of the government and constitution of this country, it was absurd and romantic, it was idle and visionary, even in the opinion of many of those who embraced it. But so far as it was calculated to make a false impression of our situation upon foreign countries, and to depreciate our loyalty in the estimation of Europe, it was a dangerous design; and though from the abandoned profligacy of those who were employed as the immediate instruments of its execution, we have to lament many private calamities and disgusting horrors: yet perhaps they should be considered as the visitations of Providence, to confound the devices of our enemies, and to rouse the loyal energies of the nation. Already she has shaken off the indolence of peace, and has put on her armour; she has seen the danger, and I trust she has become invulnerable.

Gentlemen, the last time we were collected here, upon an occasion similar to the present, was in the year 1498; and it would be in truth a dismal and distressing reflection, that during the interval which has since elapsed, the mildness, and clemency, and conciliation of our own government, contrasted with the oppression, extortion, and tyranny exercised over France and the unhappy countries which surround her, should have wrought no change in the political feelings of Ireland. But I am happy to state, that there is no room for such reflections: the good sense and property of the country have taken the alarm, and can no longer be seduced by schemes of avarice and delusion.

Neither, gentlemen, did the late insurrection originally proceed from the great body of the people—they were happy, contented, and tranquil, until a remnant of the old leaven was thrown in to ferment them.

You all recollect how the former conspirators were disposed of: some atoned with their lives for the evils they had inflicted upon their country; others were doomed to all the misery of reflection, and banished from a country which they had contributed to disgrace; many were permitted to reside amongst us, the greater part from the clemency of the crown, and a few perhaps from want of sufficient evidence of their guilt. I do not mean to impress upon your minds, that all those who survive are still hardy enough to prosecute their schemes: many of them I should hope have had the benefit of experience, have learned from their misfortunes to prefer industry and peace to anarchy and bloodshed, and despairing to see established any where their own model of ideal and imaginary perfection in government, have at length been disposed to admit, that no people in any age or in any country have ever enjoyed more perfect freedom, or more full security for their persons and property, than those who at present have the happiness to live under the British constitution; a constitution not only reasonably perfect in itself, but additionally recommended by being transmitted to us through a long succession of ages;—a constitution which we may peculiarly call our own, because no other people could derive the same benefits under it. It has been fitted for us by our forefathers, and from our infancy we have been fitted to it. Give it to a new people, and with all its perfections it would be to them a new constitution. But generation after generation it has been adapted to our people and to our soil, and day after day we have been taught to admire its perfections, to conform to its provisions, and to be regulated by its laws. It is then emphatically *our own* constitution, and is so interwoven with our nature, that we can yield it but with our lives. It has been obtained by valour and by wisdom, and by the exercise of the same virtues it may be for ever preserved.

Gentlemen, I wish I could state, with truth, that all those former conspirators had taken the same view of the subject.—But I have to lament, that many of them have not had the same benefit of repentance, but having grown hardened in their vices, and insensible of the misery they were inflicting on others, they have persevered in their old habits, and contributed not a little to place the prisoner at the bar in his present unfortunate situation. Men of depraved minds and desperate fortunes, who have grown giddy from repeatedly turning in their own heated imaginations the same chimerical schemes of avarice and ambition; and who blinded their deluded followers with specious pretences for the public good, while they are in fact endeavouring to implicate them in all

the horrors of confiscation and civil war.—Fondly hoping to emerge from the gulph in which their vices have involved them, they address themselves to the supposed grievances of others, in the vain expectation of alleviating their own.—Men too necessitous to be idle, and too indolent to work, confirmed in the habit of vice, they resist all honest occupation, and become rebels by trade.—In various disguises, and under various pretences, they travel from place to place, and from country to country, hawking reform, and emancipation and freedom, poisoning the peace of the people, and goading them to outrage and rebellion. To this end all their machinations contribute; treason is their staple commodity, by it only can they live. An Irish insurrection is the harvest which supports them.—The unhappy and deluded people who are duped by their artifices, meet their retribution in the bayonet or the rope, while the instigators too frequently escape, to plan new rebellions, and receive new rewards.

Gentlemen, it is from the union of these two classes, the wandering politician and the resident traitor, that we are indebted for the late insurrection in the capital. After the termination of the war, many of the former description, under feigned names, imported themselves into this country, and associating themselves with our resident rebels, have unceasingly exercised their ingenuity to provoke new disturbances.

But, gentlemen, it is with great satisfaction I state to you, that they found vast difficulties in disturbing the public mind.—From one end of the country to the other, the people were ready to resist their artifices, and decided in their resolution to continue not only quiet but contented;—unfortunately, however, the restless and busy agents of mischief, received the stimulative of a French war. Since this event, assuming authority which they did not possess, and making promises which they never meant to perform, they have worked upon the needy and the profligate, their labours have been incessant, and the accumulated horrors of the 23rd of July last, have been the fruit of those labours.

As in point of law each man who took a part in the insurrection, is guilty of every crime which attended it, as fully as if he had committed them with his own hand, I shall somewhat minutely detail them, as well as state the particular share which the prisoner appears to have taken in these disgraceful occurrences.

It will be manifest to you, from the facts which accompanied the insurrection, as well as from the particular evidence produced, that it was the consequence of a pre-concerted conspiracy. It did not proceed from the sudden heat or impetuosity of a mob;—it was planned and instigated by persons connected only by their treasons, and related to each other only by their common-crimes. Those conspirators who resided in the capital called in aid the

profligacy of the adjoining counties, and the insurrection was the consequence of their united efforts.

They assembled about the hour of nine in the evening, and it is material to state, that almost all of them were unarmed. The heads of the conspiracy, or to give them their own title, *The Provisional Government*, had supplied arms in such abundance as to furnish in itself complete evidence of the extent and object of their design, as well as of their gross miscalculation as to the number of their friends and adherents.

The great depôt was in Mass-lane, which is frequently called Marshalsea-lane, and which runs into Bridgefoot-street. This street is also frequently called Dirty-lane; and I mention these particulars to prevent any confusion in the evidence, as the witnesses may call them indifferently by one name or the other. This depôt was protected on one side of Thomas-street by the rebel mob, and on the side of the Liffey by centinels who stood contiguous to hollow pieces of timber which had been laid across the streets, filled with combustible matter, and ready for immediate explosion.

When the hour came, those persons who were commanded, with one consent, and as if moved by one hand, went in a body to this depôt, and were there furnished with arms. Having been thus supplied, they returned directly to Thomas-street, and were in a short time joined by rebel leaders, who animated them to proceed to attack the Castle. They encouraged each other with the expectation of plunder and pillage; each man seemed resolute that his neighbour should advance, and yet the body did not move forward. By some mistake they all happened to be rear-rank men, and each in looking for his place threw the whole into confusion, they hesitated, they halted, and they retired. I am sorry, gentlemen, to add, that this feint upon the Castle has given serious alarm to some of our neighbours in England: they knew it was an Irish fortress, and therefore thought it was within an ace of being taken, though it never was within a mile of being attacked.

Thus, gentlemen, this mighty and rebellious mob, who conceived that in a moment they would have seated the provisional government in his majesty's Castle, did not proceed much farther than the Market-house in Thomas-street.—Their gallant leaders then despairing to get them farther towards the Castle, led them on to various objects more congenial to their temper and disposition. Instead of prosecuting their crimes in the bold spirit of their proclamation, they fell upon schemes of assassination, disgraceful to the capital.—They surrounded single and unarmed yeomen and individuals of the military, whom they massacred without mercy or provocation. Colonel Brown, a most deserving officer, much loved in his regiment, and much esteemed in the army, was fired at with a blunderbuss and killed upon the spot. One or two unarmed

soldiers were murdered in the same barbarous manner;—Cornet Cole was grievously wounded;—unprotected individuals everywhere fell a sacrifice to their fury. But, gentlemen, every colour and pretence of marking men in regiments as objects of their vengeance fails them, when we come to the lamentable fate of lord Kilwarden.* Before I proceed to state that

* “It is universally agreed that the murder of this excellent man was the unpardonable act of a ferocious rabble; but there are various accounts of their probable motives in wantonly sacrificing so upright and humane a judge to their fury. A popular explanation of this is that the perpetrators mistook him for another person. There is also an account which admits the mistake in the first instance, but subjoins other particulars which appear sufficiently probable; and, as some of the facts, of which there is no doubt, reflect the highest honour upon lord Kilwarden's memory, the whole shall be given here.

“In the year 1795, when he was attorney-general, a number of young men (all of whom were between the ages of fifteen and twenty) were indicted for high treason. Upon the day appointed for their trial they appeared in the dock, wearing shirts with tuckers and open collars, in the manner usual with boys. When the chief justice of the King's Bench, before whom they were to be tried, came into court and observed them, he called out, ‘Well, Mr. Attorney, I suppose you're ready to go on with the trials of these tuckered traitors.’ The attorney-general was ready, and had attended for that purpose; but indignant and disgusted at hearing such language from the judgment seat, he rose, and replied, ‘No, my lord, I am not ready; and’ (added he, in a low tone, to one of the prisoners’ counsel who was near him), ‘if I have any power to save the lives of these boys, whose extreme youth I did not before observe, that man shall never have the gratification of passing sentence upon a single one of these tuckered traitors.’ He performed his promise, and soon after procured pardons for them all, upon the condition of their expatriating themselves forever; but one of them obstinately refusing to accept the pardon on that condition, he was tried, convicted, and executed. Thus far the facts rest upon credible authorities: what follows is given as an unauthenticated report. After the death of this young man, his relatives (it is said) readily listening to every misrepresentation which flattered their resentment, became persuaded that the attorney-general had selected him alone to suffer the utmost severity of the law. One of these (a person named Shannon) was an insurgent on the 23rd of July, and when lord Kilwarden, hearing the popular cry of vengeance, exclaimed from his car-

transaction, let me call your attention to the proclamation framed for these insurgents, I read it to show how little reliance is to be placed upon the acts or promises of "*The Provisional Government*." These are their words, "No man shall be put to death in cold blood. The first prisoners that shall fall into our hands, shall be treated with the respect due to the unfortunate." They fulfilled that engagement by dragging lord Kilwarden from his carriage, and with one voice they called for his immediate execution. And here let me pause to remind you, that up to that moment, the mob, furious as they were, had met no resistance;—they had not been more than a few minutes assembled, none of them had been then killed or wounded—they were not pursued or molested—nothing occurred to stimulate their passions or to justify revenge—they were, what they came out for their lurking places, monsters and not men.—You, gentlemen, all knew that amiable and upright judge; you know his firm and enlightened mind. A promoter of peace and good order, a lover of his king and of his country, he administered the laws of the land with wisdom and impartiality. He was faithful to the crown and affectionate to the people. In private life, he was mild and amiable, and in his public or political conduct there was no asperity; and yet, gentlemen, unoffending as he was, they encompassed him with their pikes, and in a moment stabbed him in thirty parts of the body, while he vainly supplicated them for that mercy which they probably had often experienced from him. Not content with inflicting upon him many mortal stabs, they continued to deface his body with unnecessary wounds as if they meant to write their own characters in his blood. That he should have survived an instant seems almost incredible. But Providence withheld him for a little moment that there might be something in his death to correspond with the tenor of his life; that he should die as he had lived—inculcating the laws of his country.—A magistrate who just before his death saw him in this mangled and afflicting situation, exclaimed with an indignation which the circumstance almost excused, that the perpetrators of this horrid deed should in their turn suffer immediate execution, but he raised his head and with the last exertion of his voice desired "that no man should suffer for his death, but by the laws of his country." He never spoke again, but with his dying breath has bequeathed to us a noble example of firmness and moderation. I do not wish to seize this

"riage, 'It is I, Kilwarden, chief justice of 'the King's Bench.' 'Then,' cried out Shannon, 'you're the man that I want!' and plunged a pike into his lordship's body. "This story was current among the lower "orders in Dublin, who were most likely to "know the fact." 2 *Life of Curran* by his Son, 321, note.

occasion to pronounce his eulogy; but praise must attend him when he is spoken of in the language of truth. It is impossible to relate the circumstances of his death without appearing to record his virtues. Were it my object to transmit him to posterity with the brightest panegyric, I would gather from his dying lips the last sentence which he uttered, and I would engrave it upon his tomb as an epitaph that should endure for ever.

His unoffending nephew, gentlemen, escaped to a greater distance. He was, however, met by another party, the same spirit actuated all, and he too fell under innumerable wounds.

Elated as you may suppose such minds must have been by the perpetration of these individual barbarities with impunity, they began to feel a new spirit and resolution. They then resolved to attack—not the king's forces—not his majesty's castle—but the Marshalsea prison; the few persons in it who were confined for debt were protected by a slender guard—they came upon it by surprise—they shot the corporal and fled in a moment. I should here mention the good conduct of the prisoners; with a discrimination not subdued by their sufferings or their misfortunes, they called for arms to defend themselves, preferring the security of their prison to the anarchy of the mob. They understood freedom too well to suppose it could be the gift of rebellion.

The insurgents afterwards met with Mr. Wilson at the head of a few peace officers; he called upon them to disperse: he wisely calculated that notwithstanding their numbers and their arms, there was more safety in intrepidity than flight; he fired upon them: he lost one of his men, and was wounded himself; but as with great gallantry he shot the ruffian who assailed him, he was enabled with his small party to effect his retreat in the confusion of his enemy.

Shortly after, lieutenant Brady, with forty or fifty men of the 21st regiment came into Thomas-street; he fired upon the mob, and they fled in all directions leaving several dead. A party from the Coomb guard, under the command of lieutenant Douglas, came upon them in another quarter, and dispersed them also. This detachment having come from the Coomb, and Mr. Wilson having taken his assistants from the watch-house in Vicar-street, the insurgents thought these places were deserted, and that it was possible they might take what it was supposed there was no one to defend. They accordingly attacked the watch-house, but being resisted by some old men who remained behind as too decrepid to walk, they abandoned that object, and proceeded to the Coomb. By this time, however, the detachment under the command of lieutenant Douglas had returned to its post, and the insurgents were surprised to find the king's forces there before them. They however fired a few shots, wounded two men, re-

ceived three volleys in return, and leaving several dead, disappeared I trust for ever. And thus ended the achievements of this intrepid rebellion.

There remained however one fastness which they seemed anxious to preserve; I mean the depôt, already alluded to. It was observed, that many persons flocked in that direction—that there were sentinels about it, and the hollow pieces of timber attracted notice. Captain Woodward of the barrack division of yeomanry, and lieutenant Coulman of the 9th regiment, with a small party, determined to explore it: they accordingly proceeded—they passed the hollow pieces of timber, and observing several hundred pikes resting perpendicularly against the wall of what appeared to be a malt-house, two privates, with distinguished gallantry, mounted upon those pikes, and standing upon the points of them, ascended an upper window; thus happily using these instruments of rebellion as the means of its detection. Lieutenant Coulman by this time procured a ladder and followed with the remainder of his party, and they shortly discovered what sufficiently denoted rebellion:—they found such a quantity of ammunition and instruments of death, as to leave no doubt upon any rational mind, that they were collected for some public design; not for the purpose of any individual, but for such purposes as we attribute to the prisoner—treason and rebellion. There were found thirty-six thousand four hundred ball-cartridges, several scaling-ladders, grappling-irons, hand-grenades, pikes, rebel uniforms and colours, and what is not the least important, not less than seven or eight thousand proclamations from the provisional government. With regard to the pikes, the entire mob which made their appearance, having been supplied from this depôt, no more remained for discovery than the trifling number of six or eight thousand! And here permit me to observe, that much consolation may be derived from this circumstance; it is manifest that these conspirators counted without their host; they never made a pike, but in the fond expectation of procuring a hand to direct it. I consider every pike that was found in this depôt as conclusive evidence of a desertion from their iniquitous banners.

Gentlemen, notwithstanding the horrors of that night, which no man regrets more than I do, yet I think they furnish some ground for reflection, that the people who had been worked into arms from one end of the country to the other in 1798, could not be roused beyond the assemblage of a desperate mob, as contemptible in numbers as it was atrocious in disposition.

I cannot pass over the proclamation without making a remark or two upon it: every line it contains breathes treason and rebellion; but I will not decant upon it at length; there are however some passages in it too flattering to be omitted.

After avowing their object to be to overturn the government of the country, and to break the connexion with England, they state, "that ten counties will come forward with promptitude to effect it. But five weeks have since elapsed, and not one single county has come forward at their call. The conspiracy seems almost ended where it began; the people are beginning to reason a little with themselves, and to ask each other—What is it possible that we should gain in this contest? Is it to be supposed that the French will waste their fleets and their armies, that they will incur the dangers and expense of invasion, that they will sacrifice their treasure and their lives for us—A people whom they never saw, with whose manners and language they are utterly unacquainted? Is it possible, that those who plunder and oppress their neighbours, will bring freedom and comfort to a distant land? Can those, slaves themselves, impart freedom to others? Is our religion or our morality to be improved by them? Protestants of all descriptions shrink at their approach; the intelligent Roman Catholic equally shuns their embrace—he has much liberty to protect and much property to preserve. He has experience to direct him; from within he sees a licentious rabble, cruel and unrestrained, whose property is plunder, and whose faith is persecution, who would begin by annihilating others, and conclude with trampling upon him. He is equally warned from abroad; he sees that France has uniformly marked her progress through other countries with insult and detestation; that she comes to protect, but that she remains to devour and to pillage. He feels that he could derive neither benefit nor satisfaction by transferring the payment of tithes from a Protestant church to an infidel government. He does not suppose that the French will establish in Ireland what they have substantially abolished in France; or that they will honour that religion in others which they have degraded amongst themselves. Not only the dignitaries of their church have been humbled and its revenues exhausted, but the supreme head of it, the pope, is shaken upon his feeble throne; the papal sceptre it is true still continues in his hand, but its operations are insultingly directed by his Corsican coadjutor. All property and all religions are equally interested to resist him—he has disgraced the name of an usurper, and has made tyranny more odious than it was—he has equally deceived his subjects and his allies, and has made universal perfidy the foundation of empire. And yet this is the man to whose tutelary protection our modern reformers are anxious to commit their infant republic; I admit their proclamation in its modesty does not state who is to be *their* first consul, but as it speaks of "a greater exertion, to be rendered still greater by *foreign assistance*," I think it is no extravagant conjecture to presume they in-

send to borrow him from France, and I am sure it is a guardianship he will not be reluctant to undertake. No, gentlemen; so long as we have a treasury to be plundered, a people to be enslaved, or a religion to be insulted, we may rely upon the unceasing solitudes of his consular highness: we have already seen him extend his cares to other republics than that of France; he has possessed himself of the republic of Italy, he has sold the republic of Venice, he has betrayed the republic of Switzerland, and he has plundered the republic of Holland.

Is it then surprising, that nineteen counties have not come forward to implicate their country in the miseries of civil war, in the expectation of raising up another republic in Ireland, to offer at the shrine of his ambition, and to swell the bloody catalogue of his crimes? No, I trust there is too much good sense and good spirit in the people, and that Providence has reserved us for happier destinies. I trust we never shall be driven to seek shelter from France, within whose bosom there is no repose. Her tree of liberty has been long since withered, and under its baneful branches there is no vegetation.

Gentlemen, there is another part of the proclamation to be resorted to, because it shows the dignified moderation of government, under circumstances of provocation, not within the common powers of the human mind to resist. It audaciously states "that the first attempt to execute an individual in one county should be the signal for insurrection in all." But still the justice of the country has pursued its firm and constitutional course in despite of the threats of treason, and uninfluenced by the more painful anxiety of those who were over zealous for its execution. Neither terror upon one side, nor apprehensions upon the other, could alter its progress. It has moved slowly but with a firm and determined step, the law has taken its serene course undisturbed by the agitations which surrounded it, and government has established its strength in its moderation.

The special commission was not sealed for a fortnight after the insurrection, and near three weeks have elapsed since it issued, so that a full opportunity has been given to the prisoners of an impartial trial. They will have the advantage of legal advice of their own selection, and they will have the farther assistance of learned and upright judges, more anxious to see the establishment of his innocence than to pronounce the punishment of his guilt.—And here let me intreat you, gentlemen of the jury, to imitate the moderation of government, to partake of its temper, and to profit by its example. There are passages in the proclamation of this invisible government, which also call upon you for an exercise of your magnanimity.—"All Irish militia, yeomen or volunteer corps, or bodies of Irish or individuals, who, fourteen days

"from the promulgation and date hereof, shall be found in arms, shall be, considered as rebels, committed for trial, and their properties confiscated." From what a heated and disordered imagination these sentiments must have proceeded! What a silly effusion of arrogance and presumption!

I say, gentlemen, let not this threat move you from your moderation, raise your minds above the insult, and let anger give way to compassion. The fears and conscious guilt of rebellion make it intemperate and cruel: the authority of government, founded in legal right and exercised with justice, retains the calmness and dignified composure of virtue; proceed then in the spirit of a regular government—let not passion be roused into operation—let those who penned this proclamation feel eternal discomfiture, when they find that its principle effect has been to stimulate with new provocations the well tried loyalty and courage of the army, the yeomanry and volunteers of Ireland; they may be provoked, but they cannot be intimidated; faithful in their attachment to the best of kings, their zeal in his service increases in proportion as they find themselves excluded by treason from the pale of its mercy.

Hitherto, gentlemen, I have confined myself to general circumstances, showing the primary fact, that upon the 23rd of July last, there existed a rebellious insurrection in the city of Dublin. I rely not upon the notoriety of the fact, or the legislative declaration of it; evidence shall be produced before you, establishing it beyond doubt, and having done so, nothing more will be necessary, with regard to the prisoner at the bar, but to show that he aided and assisted in it. We will produce witnesses to prove that the prisoner was in Thomas-street upon that night, at the head of a party, armed with a pike, that he called upon them to come on and encouraged them to assault the king's troops, thus distinguishing himself as an active leader. If this shall appear in evidence, you will consider it with calmness and deliberation. I have no doubt you will faithfully discharge your duty to the prisoner and your country; I will not anticipate your verdict; if the case should be doubtful, you will be indulgent to the prisoner; if you are called upon for compassion, you will exercise that which embraces the whole body of the people, as well as the narrow circle of the dock. The tranquillity which has succeeded the 23rd of July, notwithstanding the hopes and predictions of traitors, has enabled you at this day to enter upon the investigation with becoming composure, and to extend to the prisoner the fullest advantages of the British constitution. I am happy gentlemen at being able to call your attention to the universal tranquillity of our country; the storm has passed over us, and the constitution has survived; our gracious monarch sits unmoved upon his throne, his sceptre resting upon his people. Contrast your situation with

those unhappy countries which have been subjugated by the arms or seduced by the artifices of France. "They are brought down and fallen, but we are risen and stand upright;" and may we maintain that proud attitude, until peace and tranquillity shall be restored to Europe and until that nation which has been so long employed to scourge other countries for their crimes, shall in due time be called upon by the wisdom of Providence to answer for her own!

Patrick Mac Cabe sworn.—Examined by
Mr. Solicitor-General.

Where did you live immediately prior to the 23rd of July last?—In Francis-street.

In what situation in life?—I followed the calendering business.

Were you in Thomas-street on the night of the 23rd of July last?—I was.

Were there numbers of people assembled there?—There were.

Did you hear at any time before the 23rd of July, that there would be an assembly of the people, or any rising of the people?—I did.

Upon what day did you hear of it?—On Friday, the day before.

I do not mean to ask you to mention any names, or from whom you heard it, but whether you heard what the object of the rising was?—Not immediately.

What were you told was to be done?—At that time I was not told.

How soon were you told?—Next morning.

Where was it you were so told?—It was in a field contiguous to the canal.

When you were informed there, that there would be a rising, were you informed what they were to do?—Partly.

What was it?—

Mr. Ball.—My lord, as mere matter of inducement, I agree that it may be fair to examine in this manner; but I trust, no examination will be held respecting conversation at which the prisoner was not present, and of which he had no information.

Mr. Solicitor-General.—There is no impropriety in the question. What were you told was to be done?

Mr. Ball.—My Lords, I trust this question will not be persevered in, unless the counsel say, they will afterwards bring it home to the prisoner.

Lord Norbury.—We are not driven to give an opinion upon this objection, because it is, accompanied with a qualification which admits the evidence to be what it is, mere preliminary matter; the effect of it will be judged of hereafter.

Mr. Solicitor-General.—What was the object communicated to you?—That the people were to assemble there.

In the field?—Yes.

At what hour?—Between eight and nine o'clock.

When the people were assembled, what

was it intended they should do?—The first place they were to go to, was to the barrack at Island Bridge.

Do you mean the artillery barrack?—I do.

For what purpose?—Of course to seize what was in it.

What did they expect to find?—Arms and ammunition.

Were there any particular kinds of arms there?—Not that I could hear of, more than cannon and musquets.

Was there any other place, that they were to attack besides that barrack in Island Bridge?—The magazine at the Park.

What did they expect to get there?—Gunpowder.

Was there any other place they were to attack?—No not the party that was to go there.

But was there any other place to be attacked by others?—There were several places, by other parties.

Mention them?—The chief place that was mentioned was the Castle.

Was there any mention made of the manner, or the side at which the castle was to be attacked?—As nearly as I recollect, it was Ship-street side.

Why were they to attack it on that side. Was any reason given?—No reason, that I could hear.

Where did you go, when you left the field?—I did not go to the field.

You were near it?—No; not that time.

What passed after this conversation you speak of?—It ended there that time.

That was in the morning?—Yes.

Did you meet any of the same persons upon the same day?—I did.

Was there any place appointed that you should meet at?—There was.

Where?—At Rainsford-street.

Where is that?—Near Crane-street, in Thomas-street.

Was any hour appointed?—Yes, nine.

Had you received any arms?—I did.

What?—A blunderbuss.

At what time did you receive it?—At six.

Did you go to Rainsford-street at the appointed hour?—I did.

Did you take the blunderbuss with you?—I did.

How long did you remain at Rainsford-street?—About three quarters of an hour.

While you remained there did any number of people assemble there?—They came by that place from different parts.

Which way were they going?—Towards Thomas-street.

Were any of them armed?—Yes, some with Pikes.

Were any unarmed?—Yes, a great many.

Then the greater number were unarmed?—Yes; until they got to Thomas-street.

Did you go on with them to Thomas-street?—I did.

When they got there, what did they do? or

did you hear him say any thing?—Some of them cried out, and wanted to know where the arms were.

Was any answer given to those who called out?—Yes, a man who stood at some distance from me said, “If they went with him, he would get them arms.”

Did you call for any thing there?—I did.

What Did you call for?—I said, I had no ammunition for the blunderbuss.

Was any answer given?—Yes.

What?—A man there said he had some in his pocket, and gave me some.

What did he give you?—Ball-cartridge.

How many?—About forty.

Did the people follow the man, who said he would get them arms?—They did.

Where?—Down to Marshal-alley; and they turned to the right upon the first turn.

To what street did that lead?—To Dirty-lane.

Did you accompany them?—I did.

What passed there?—They came to a place where there was a great number of pikes, and every man took up one.

Where were the pikes brought from?—I cannot say; they lay across the lane, as if thrown out of a warehouse.

Did you observe any window or door open, from whence they might be thrown?—No. I saw a window, but I do not think they were thrown from it, it was so high.

What did the people do afterwards?—They came out into Dirty-lane, and from that to Thomas-street.

Did you accompany this armed party to Thomas-street?—I did.

When you got there what did you first observe this armed mob do?—The stopping of a carriage: it appeared to be a road chaise.

What did they do?—They took some boxes and a trunk from it.

Did you observe any person come out?—A tall slender man came out.

Did you say any thing upon that?—I said it was not plunder we were looking for, but liberty.

After this transaction where did you go?—Down to Vicars-street, where we stopped.

For what purpose?—A party made an attack upon the watchmen to get the watchmen's poles.

Did they succeed in getting any?—I believe they did, from what I saw next morning.

Did you see any that night?—No.

Where did you proceed to?—Across Francis-street and Plunket-street.

Where then?—We returned to the end of Francis-street:

What happened there?—From the noise we made, the Coomb guard turned out and fired upon us.

What was done by your party?—The best part ran away.

Did those who remained do any thing?—I cannot say; I did not see them do any thing.

What did you do yourself?—I went up Francis-street as smart as I could.

What did you do then?—I went towards Pimlico and remained there most part of the night.

Where did you go to from that?—When the streets were quiet, I went towards home.

About what hour?—Near one o'clock.

What happened?—I was some time waiting at the door in Francis-street to get in, and Mr. Drury and a party came up and took me.

Did they get the weapon you had?—They did; they took the blunderbuss and myself.

Patrick Mac Cabe cross-examined by
Mr. Ball.

How long is it since you have been concerned in the business of politics and rebellion in this country?—I cannot say.

Were you in the business of 1798?—I was concerned in it, but was not out.

You have kept up a correspondence with those people since?—I have.

And often talked of the revival of that business?—It may be so.

You have a pretty general knowledge of the leaders of that rebellion; I do not want to know their names?—Which rebellion do you speak of?

That of 1798?—I have heard of them, but do not know them.

You know the subordinate leaders among them?—I might know a friend and talk to him.

When did you first hear of this last rising?—On Friday.

Was that the first time you heard of the rising?—No, I heard rumours to and fro.

Was it very generally known to the common working people of that part of the town?—I cannot say it was; but I believe it was not generally known by the lower order.

Do you not believe that an honest industrious man might not know of it, until the explosion?—It is possible.

From the secrecy of the plan, and the smallness of the number, there was little more, excepting a few strangers, than the ordinary concourse of people together on that night?—I cannot say.

The common working people followed their ordinary course?—I suppose so.

Is it not a common practice to pay journeymen upon Saturday evening?—It is.

Do you not believe that Saturday evening was chosen by some of the conspirators, because it was a period in which journeymen were usually about the streets after receiving their wages?—It might be the case, but I did not hear it fixed in that manner.

Was not the object of many concerned in this business to obtain private plunder?—I cannot say.

You were apprehensive they were looking for plunder?—I mentioned so.

A great number of the body had arms?—No arms but pikes.

It did so happen that a great number were mixed among them, who had no pikes?—In a very short time they had all pikes.

But at first they had not?—They had not.

Will you take upon you to say, that every man whom you had seen first, was afterwards armed?—Every man who chose might have a pike; but it is impossible to say as to every man being armed.

Is it not possible, that some men, who were with the party first, might have gone home quietly afterwards?—I cannot say; it is impossible to answer for every man who was there.

Do you not think there might be some men who took arms, without an intention of doing mischief?—I should suppose that every man who took arms designed to act.

Were not some men forced to join them that night?—I saw no man forced.

Did you not hear that a particular gentleman was forced to take a pike that night and appeared to head the party?—No, I did not.

When were you taken up?—I may say, the next morning; it was after twelve.

How soon after did you consent to become a witness?—In seven or eight days.

You were in some apprehension for yourself in that time?—I certainly was.

You have now no apprehension?—I cannot say.

Will not your own life be saved by convicting others?—I cannot say; I never asked any person about it.

What do you believe in your own mind?—I cannot form any belief of it.

Were there not pikes thrown out in other places in the town that night?—I did not hear it.

Did you not hear that women threw pikes out of houses?—I did not.

Did you not hear that women carried out pikes and said to the men, take a pike and fight for your liberty?—I did not hear it.

Where do you live?—In Francis-street.

Did you sleep there last night?—No, sir.

Edward Wilson, esq. sworn.—Examined by Mr. Plunkett.

In what station are you?—I am chief peace officer of the Work-house division, and a magistrate of the county of Dublin.

Do you recollect having been in Thomas-street on the 23rd of July last?—I do. I went there about nine o'clock that night; I had received information about six o'clock from the superintendant magistrate, that it was expected there would be riots there that evening, and I was directed by him to be upon the alert to prevent them.

Did you take any step in consequence?—I sent an order to the peace-officers who generally act with me, to meet me at the watch-house in Vicars-street.

Where is that?—It runs into Thomas-street, near the Market-house.

How many met you?—Eight; five of whom

had pistols, and I examined them to see that they were loaded, and I proceeded with the men to Thomas-street, and Richard Cooley a watch constable, and two men, making in all eleven men, exclusive of myself.

Were you armed?—I had pistols and a sword.

When you arrived in Thomas-street, what did you perceive?—I saw an unusual number of persons assembled in the street, especially about Dirty-lane, and the Fountain there.

What description of persons?—They seemed to be common working people; many of them seemed to have come from the country; they had frize coats upon them; they seemed to be unarmed; they were in groupes of three or four standing together, as if consulting together. I thought they were about something improper, I ordered them to disperse, and told them that if they did not, I would take them into custody.

What did they do upon that?—On hearing me, they all, as if knowing each other's minds, went towards Marshalsea-alley, and even those from the opposite side also walked into that alley, which astonished me.

They moved as by a preconcerted plan?—Yes.

Had they any arms?—They had then no arms that I saw.

Have you since seen the place where the arms were deposited?—I have. The mob went into Marshalsea-alley and there is an angle that turns from that lane into Dirty-lane.

Court.—Was there access from that place to where the depôt was?—There was.

How far was that turn down the alley?—A few yards from the four-courts Marshalsea.

What did you do?—They had scarcely got down as far as the Marshalsea, when I heard three shots fired, and I imagined they had attempted to break open the prison, with intent to liberate the prisoners; I thought so at that time. I knew there was a guard at the Marshalsea, and I thought the guard would beat them off. I then brought my party down Dirty-lane, to attack the mob in the rear, and meet them in their retreat.

What happened then?—When I got into Dirty-lane, I observed a great number of people about the first public-house on the left hand; I went to the door, and desired them to shut up the door. One fellow made a sudden effort to get out, but I drove him back, and the woman of the house knowing me (as I had punished her before for keeping improper hours) called out to shut the door, and it was shut. I then proceeded to the lane which leads into Marshalsea-lane, and to my utter astonishment found myself at the head of a column of men with pikes upon their shoulders, they were moving in a slow manner.

Were there many?—The lane was quite full, they were moving regularly, and seemed as if they were waiting for the men in the rear to get arms.

How many do you suppose there were?—I suppose three or four hundred.

There was some time occupied while you were at the public house?—A very little.

What did you do then?—I found myself so close upon them, that it was impossible to retreat. If I thought I could, perhaps I would have done so; but I thought it best to attack them. I called out (holding a pistol in my hand) that if they did not lay down their arms, I would fire upon them.

Did this produce any effect?—They seemed surprised at being accosted in this manner, and seemed to look for the place where the voice came from, and some laid their pikes against a wall; I advanced, and called out again, when a tall man, muffled up with a great coat to his chin, and of better appearance than the rest, made a full lounge of his pike at me.

Were you wounded?—I was; it struck me in the belly. In the action of his making the thrust, I fired, and he received my shot in the breast; he and his pike fell to the ground. Three or four of the peace officers fired, and killed two or three of them, which threw them into some confusion in the front, but they recovered in a very short time; I thought I was killed; I bled an immensity, and retreated towards Thomas-street, with my hand upon my wound. The pikemen opened right and left, and left an open space for some men in the rear to fire upon us, which they did.

Did their fire take effect?—One of the watchmen whom I saw a few minutes before was unfortunately killed.

What farther passed?—When I got to Thomas-street, having the cover of a corner house, I halted the peace-officers, thinking to have another shot at them, but they did not pursue; they only kept up a fire through the street. By the help of the peace-officers I got down through Meath-street to New-market watch-house, upon the Coomb, and one of the officers went to the Coomb and Cork-street barracks, to apprise the army there. I reloaded, and then gave the command of the party to an old soldier among the watchmen, and I went through Blackpitts to New-street, where I lived. I called upon Mr. Bell, who had a corporal's guard of soldiers, and he planted centinels upon the road. We took a number of prisoners that night.

You need not mention their names; but state what more passed?—I continued on duty the whole night, not wishing to be taken in bed.

Edward Wilson, esq. cross-examined by Mr. Bethel.

This was on a Saturday night?—It was.

You know that Saturday evening is a time, when a number of working people are returning to their employers, bringing their goods and receiving wages?—Yes.

Have you not heard, that some of the work-

ing people returning home were arrested by the rebels in arms, and forced to join them?—I heard the circumstance of one gentleman, but did not know it.

Might not that happen to men in an humbler class of life?—It might.

Felix Brady, esq. sworn—Examined by Mr. Mayne.

What regiment do you belong to?—The 21st royal fusiliers.

A lieutenant, I believe?—Yes, sir; and adjutant.

Were you upon any duty on the 23d of July last, in the evening?—I was.

Where?—In Thomas-street.

Had you any men under your command that night?—I had between forty and fifty.

Where were they at first?—At Cork-street barrack.

Had you those men with you upon duty?—I was going to acquaint colonel Browne, that there was a mob out in the city, and that our drums had beat to arms.

What hour was this?—About half-past nine.

Where was his lodging?—In Usher's island.

What part of Thomas-street did you come to first?—The narrow end near James's-gate. I came across the canal.

How came you to bring the party with you?—There was a report that soldiers were being killed in all directions by the mob, and I brought the men with me to escort colonel Browne to the barracks, or receive his orders.

What did you first meet, when you came to Thomas-street?—I met a man with a pike in his hand, in the middle of the street.

Were there any persons with him?—No one.

What did you do?—I seized him, and he made a great noise; upon which a bottle was flung from a window on the left, among my men; and a shot was fired from an entry on the right, which wounded one of my men.

Is that man living, or dead?—He is dead. He died on Saturday last.

What did you observe afterwards?—I heard an huzza in my front, and I heard a noise of the feet of men approaching me.

Were there many?—I cannot say: it was very dark. There were not a great many huzzas.

What did you do then?—At the time I left Cork-street barrack I did not make the men prime and load. Having fixed bayonets then, I did not think a mob would attack me; but when the shot was fired, I formed into subdivisions, and made the men prime and load, and fire from the first sub-division.

Did you observe any thing then?—From the light of the firing, I saw men armed with pikes, as I found afterwards they were: they appeared to me to be white staves; but I did not know at the time they were pikes. My men kept up an independent fire, and the people fled in all directions.

Did you find any thing afterwards?—I found six dead and one man dying. Two men were taken; and it was reported to me, that they had pikes in their hands, and we got a number of pikes upon the ground.

Is there any person in court who was taken that night?—I do not see the man whom I took first.

I do not mean that man. Do you see the prisoner at the bar?—I do: that man was brought to me a prisoner.

How soon after the fire?—In about two minutes. He was afterwards brought to general Fox.

There were other prisoners taken that night?—There were.

There and about that time?—Yes.

Where did you proceed afterwards?—After collecting the pikes, my man who had been wounded, caught me by the coat, and requested I would give him leave to go to the barracks. He said he was very bad; I said it was dangerous for him to go by himself, and I did not wish to diminish my force by sending a detachment; but that I would bring him to the barrack in James's-street.

Did you meet any thing particular afterwards?—None but the events I have told you of.

Did you see any soldier?—After I was at James's-street barrack, I found a trunk with "Cornet Cole" upon it, and a soldier of the 16th dragoons dying of pike wounds.

Where was that?—At the head of Dirty-lane.*

*Felix Brady, esq. cross-examined by
Mr. C. Ball.*

Some of the soldiers took this man and said he had arms?—Yes, and they gave me the pike, which it was said was found upon him.

You did not say that upon your direct examination?—The question was not asked me.

Where was he brought to?—To James's-street guard-house.

Was he searched?—I believe he was; but I was not present.

What became of the man, who was taken singly by himself?—He was brought to general Fox, and from that to the Prevôt.

Was there any doubt as to the identity of the prisoner, and that of the first man taken?—Some of the soldiers were of opinion, that this man was the first man taken; but that is nothing to my opinion.

When you marched up the street, you did not see the first man until you came close to him?—Very close; the men marched close and silent.

Did you march upon the flags?—No, in the middle of the street.

You had forty men with you?—Yes.

Such a number of men make great noise in marching?—When men are well disciplined and attentive to the orders they receive, they do not make much noise.

You heard captain Wilson examined?—Partly.

You heard him say, that he could distinguish them in their frize coats, and with pikes, though that colour is not so conspicuous as red, when there is any confusion?—I did not hear that.

Could not the prisoner standing singly by himself see you, before you saw him?—It stands to reason that he might.

Could he not have distinguished your uniform?—The night was dark, I do not think he could.

He might have observed you before you observed him?—Yes.

Suppose him a mere stranger to the transaction, and an innocent man, he could have escaped?—From the darkness of the night, and the silence of the men, it is possible he might be surprised.

Do you not think he might have escaped?—I rather think not, for I got within a yard of him before he observed me, as I judged by his appearance.

Your men were clothed in scarlet, and had bright arms?—Yes.

Could he not, upon perceiving them, escape as you believe?—I have one thing to believe, that he could not escape, as I came upon him.

Do you mean to say, that it was impossible he could escape?—I believe that from the time he observed us, he could not escape.

Is it your opinion, that he did not observe your approach, until you came within a yard of him?—He might not have observed us until within a yard of him, and I believe he did not.

Did you charge any person with presenting a pike at you?—No, but I charged a man with having a pike in his hand, and he said he found it in the street.

Who was that?—I saw him in court this day.

[The witness was desired not to name him.]

Had you at any moment suspected any other man besides that man to have presented a pike at you?—No other man, from the time I saw him at day-light afterwards.

Are any of your men to be examined?—There are some here.

At what hour did you charge the man with having a pike in his hand, and presenting it at you?—I charged no man with presenting a pike at me.

Did you give a person into custody?—I did, to the corporal, and he was sent to the barrack.

Did you identify that man afterwards?—I did, when I saw him in the guard-house.

How soon after?—About fifteen minutes after.

* This is also called Bridge-foot-street.
Orig. Ed.

Then in about fifteen minutes you charged him with having a pike in his hand?—I did not know him to be the man who was taken with a pike.

Then there was a difference of opinion?—I will explain that; when I was going to general Fox with thirteen prisoners, there was a man making a great noise and kicking up a dust. I asked was that the rascal I took in Thomas-street? the men said it was not.

What noise was he making?—He was endeavouring to make his escape, and the soldiers would have killed him, if I had not prevented them. He threw himself down and tossed himself about to get off, he would not come on by any means. This was the man now at the bar.

Jury.—Did he appear to be in liquor?—The first man I took was standing still, and said, he was a poor man and had many children; he did not appear to be in liquor.

You did not see any pike in his hand?—No, but the soldier brought him and a pike, and said that was the pike the man had.

Court.—Was that said in the presence of the prisoner?—It was.

Did he say any thing upon it?—No, he made no answer.

Mr. Ball.—What is said by another person and no answer is made to it by a prisoner, is not evidence against him, unless he makes it evidence, by acting upon it, or adopting it.

Lord Norbury.—It would extremely derogate from the dignity of these proceedings, to interrupt the trial by arguing a point of this nature.

Mr. Attorney General.—My lord, I wish to have the matter cleared up. The witness stated that one of the prisoners said, he found the pike in the street; which of them was that?—The first man we took was brought before general Fox, and he said, he found the pike in the street.

Was that the prisoner?—It was not.

Mr. Attorney General.—My lord, that ascertains the matter, and I am glad that it has been explained, that the prisoner may have the benefit of it.

Corporal James Stott sworn.—Examined by Mr. O'Grady.

Do you know the prisoner at the bar?—I have seen him.

Where did you first see him?—In Thomas-street, on the 23rd of July last.

Had he any thing in his hand?—He had a pike in his hand.

Did he say any thing?—He cried out, "Royal pike-men charge them, here they come."

How near were they to you?—Within a few yards.

Were you near him?—I was upon the left of the division.

How soon was he seized?—In a moment.

Who seized him?—I do not know the man

who seized him; but he threw away his pike, and I assisted, and seized him by the throat and put him in front of the division, and took him to adjutant Brady, who commanded the division.

Court.—You are a corporal in the 21st regiment?—Yes.

Corporal James Stott cross-examined by Mr. Bethel.

At what hour was this?—It was about ten.

Was it moon-light?—No, it was not.

Was it a dark night?—It was.

The second division was in the rear, it was not in the front?—No, sir.

You are an old acquaintance of the prisoner?—I never saw him before that night.

Did you ever hear him sing?—I never heard him sing or whistle.

Did you ever hear him speak before?—No.

Would you take upon you to swear that he was the person who spoke that night as you have mentioned, being in the dark, and never having seen him before?—I would, because I heard him afterwards, and I knew his voice again.

Was he not alone? were there others near him?—Not very near him; there were many persons there; but he was nearest to me, and I heard him.

Do you not believe, that a man of ordinary description might be pressed into this business?—Yes, he might; but at the same time he could not be forced to call out, "Royal pike-men charge."

That is, supposing his was the voice you heard?—I am sure he was the man I heard.

What countryman are you?—A Scotchman.

Have you not heard that many persons were forced into that rebellion against their consent?—I did not hear it.

Court.—As soon as you heard the prisoner call out, "Charge," you saw him seized and he threw away his pike, and he was brought directly to the officer?—Yes.

Did you bring the pike?—No, I saw him throw away the pike, but whether it was taken up or not, I do not know.

Did you see the pike?—I saw it was a pike by the light of our pieces.

Did you ever lose sight of him, from the time you heard him, till he was seized?—No.

Jury.—Was it from his voice you heard afterwards, that you knew the prisoner?—No; but he was advanced and nearest to me of any of them.

Court.—Was he out of your sight at all from the time he called out "Charge," until his being seized?—No; one of our men ran out and seized him; he threw away the pike; I took hold of him and placed him between the first and second division, until an opportunity occurred of bringing him before the officer.

Jury.—Was it a man of the first or second division who seized him?—A man of the second division.

Lieutenant *Brady* called again by desire of the prisoner's counsel.

I am desired to ask you, whether the prisoner was not taken opposite the barrack in James'-street?—No, it was in Thomas'-street; to the best of my knowledge he was the second man, that was taken; we took no man in James'-street.

Wheeler Coultsman, esq. sworn.—Examined by *Mr. Townsend*.

You are an officer in the 9th regiment?—I am.

Do you remember the 23rd of July last?—I do, sir.

You were in Dublin on the recruiting service?—I was, sir.

Did you receive any particular information that day?—I did.

What was the nature of it?—That the city of Dublin was to be attacked that night by a band of armed rebels.

Did you take any steps in consequence?—I went to general Dunne, and told him of it.

Did you take any other step?—I took a carriage, and went to Finglass, to alderman Crothers, where my uncle captain Woodward was, and told him the same. On my return, I met a party, who had taken some man with a pike, and I brought it to general Dunne, stating that the business was commenced, for there was a pike. I then desired as many of the barrack division to get together as I could; but they had no arms, and could not get any. There were about nine men.

Where did you go from that?—I went to my own lodging upon Arran-quay, within pistol-shot of my uncle's upon Ellis's-quay, and remained there some time. A few of the men of the barrack division brought a box of ball-cartridge, which they said they found, and they threw it into my uncle's hall, and desired my uncle and me to head them; we then went out.

How many were there?—A serjeant, and eleven privates, of the barrack division; serjeant and two men of the 9th regiment, and eight or ten volunteers in coloured clothes.

How was this party armed?—Three fire-locks, two blunderbusses, some pistols, and swords.

Where did you go to?—To Bridge-foot-street, otherwise called Dirty-lane.

What did you perceive?—A large frame of timber across the street.

Was that near Bonham-street?—It was.

Did you know the use of that frame?—I do; I have seen some of them in England, and have seen drawings of them. It was open at each end for a tube, and plugged up tight; it is then filled with ammunition, and by a hole bored at the top may be let off, when it

explodes, and is calculated to resist cavalry or infantry, and flies in all directions, and does great mischief.

Did you examine the contents?—No, I went to remove another, which was across Bonham-street, and then I went to pursue the rebels.

Court.—Are you acquainted with machines of that kind?—My lord, I never saw them used, but I saw one in England, and have seen drawings of them, and have learned the use of them.

Mr. Townsend.—Did you proceed through Bonham-street?—Yes.

That led you to Marshalsea-street?—It led to the Marshalsea. On going there, a person asked, "Was there an officer with us?" he was answered "There was." He then said, the corporal of the guard was shot, and he begged some ammunition and we gave him a few rounds, not having much to spare. A serjeant and twelve men of the 38th regiment came up. He said he was sure the lane near us was full of rebels, but he was unwilling to attack them, his number being so small. The men called upon me to lead them into the lane.

Is there any cross-street between that and Thomas-street?—I believe not.

Did you perceive any people in the lane?—

None that I could see; we had a flambeau and a lantern. Upon going into the lane, we found a great number of pikes, apparently thrown from a building, which had the words "Malt Stores," upon the doors of the second story.

Did you see or hear any number of people as you came near the stores?—No, I cannot say I did. The men upon seeing the pikes, gave three cheers, which created some confusion. I went up to a hackney-coach, standing near the pikes, and which had every appearance of being just arrived.

From what circumstances did that appear?—From the quick manner in which the horses breathed, their nostrils extended, and their sides puffing.

In what situation were the pikes?—They were piled against the wall, with the blunt end down, and the points up, as if dropped out of the stores; they were in such great numbers that no carriage or horse could pass.

What was done there?—Mr. Irwin and Mr. Cantrel, of the barrack division, mounted upon the pikes, and got into the malt-stores. Private Gallagher of the 9th regiment, followed by a ladder which we got, and I followed him. There were four of us entered.

In what direction were the horses' heads?—They were turned towards the Marshalsea, and certainly were drove in from Dirty lane; they could not turn in the lane where they were.

When you entered that store, what did you perceive?—When I got in, I found a bundle of remarkably good hints of excellent manufacture.

Court.—Had you any light?—Not at first when I got up, but I got a lantern afterwards. The next thing I discovered was a great quantity of ball cartridge. When I discovered that, I exclaimed that there was ammunition for ten thousand men: they were made up in parcels of twenty each. There were at least, thirty thousand rounds, I saw a great number of hand-grenades lying on the floor.

Mr. Townsend.—Describe to the jury what were the nature of those hand-grenades and the uses of them?—They were made of short bottles, like ink bottles, filled with powder, inclosed with canvas, and buck-shot, and then covered with clay. I saw also a quantity of what I call bottle-shot, the size of Champaign bottles.

Court.—Can you say how many?—I cannot now, there was a great number.

Mr. Townsend.—Did you examine any of them?—I did; they were enclosed with strong canvas and tow, with twelve musket balls round each bottle, and the bottle itself was filled with powder. I found a great number of Proclamations, quite wet from the press; they were styled, "From the Provisional Government."

Of what size?—The size of that [one was produced, being upon a large sheet of paper]; and I got a number of small ones.

How many were there?—I cannot say exactly.

What do you mean by their being "quite wet"?—There are different degrees of moisture; they were as if they had been rubbed over with a paste brush, as wet as I have seen a newspaper just delivered out.

Was the place wet?—Not that I saw; every thing else was dry, the powder was dry.

How many bundles of the large proclamation were there?—I saw three in the room where I was, and the men said they got four in another.

How thick was each bundle?—Near two feet. I mistook them for bundles of linen, they were so large.

Were they folded?—There was one folded and tied.

Then probably there were some thousands of them?—Positively, there were some thousands.

How many small ones?—Not so many.

What was done afterwards?—I then got the lantern, and got up a bench, and then descended by a sort of ship ladder into another room. I there found pieces of white kerseimere, such as small-clothes, and pantaloons are made of, some green uniforms with white edging, and a place as if persons had slept there. One coat was very fully trimmed with gold lace, and there was a large military cocked hat; there were several flags, not very military, but of that nature; they were green with white edging. I found a quantity of loose powder upon the floor: I cannot say how much, but I trod upon it, and it encircled my shoes nearly up to my ankles. I do not

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know whether my shoe reached the floor. I saw boxes of ball-cartridge and boxes of powder also.

Were there any pikes there?—We found them behind a narrow partition, when daylight came: it seemed to extend some yards from the original wall, and appeared to be newly built, a brick thick.

Was it pulled down?—It was; and behind it was found a great number of pikes.

Was there any passage through this partition?—I had gone through it when I went by the ladder as I mentioned before.

How many pikes were there?—I cannot exactly say.

Were there ten thousand?—I think not.

Were there seven thousand?—I think there might altogether. I judge from this circumstance: We cut off the body of the hackney-coach, and filled the carriage part three times with pikes, and there were seven car loads besides. When I had got upon another floor where I found a great quantity of powder lying loose, I apprehended that some danger might happen from the candle, or the snapping of a firelock, and I ordered the people out, and then went down myself. When I got upon the lower floor, I found a great quantity of bread fresh and hot from the oven; they were in baskets and the baskets all full; there were above twelve baskets and each might contain twenty loaves. On first coming up to the stores, I discovered a hogshead of malt liquor near the coach, and I made the serjeant run his halbert into the head of it, for fear the men should drink, and apprehending an attack, I could not answer for the consequence.

What did you do afterwards?—Being informed that the place belonged to a Mr. Coleman, I went with some men and took him and gave him to alderman Darley. I sent for a reinforcement, and captain Gordon and a party of the 21st came, and I gave the stores up to him.

[This witness was not cross-examined.]

Serjeant *Thomas Rice* sworn.—Examined by *Mr. Attorney General*.

Were you upon any service on the evening of the 23rd of July last?—I was with lieutenant Coultsman, my officer.

Did you go into any house?—We went into stores in Marshal-lane.

Do you mean the place leading into Dirty-lane?—I do.

What did you see there?—I brought out a bundle of proclamations.

Is that one of them? [Producing one.]—It is; I wrote my name upon it, and put a private mark, there it is.

There were others?—There were a great many; but that is the only one I took.

Were the others of the same kind?—I believe so.

Did you find this one by itself?—No, I took it off a bundle, for my own curiosity.

3 A

Do you know what grappling irons and scaling ladders are?—I do.

Did you see any that night?—I did, I saw ladders and irons for fastening to walls.

Mr. Attorney General.—It would only be a repetition of what the former witness said, to examine this man any farther.

The Proclamation was then read as follows:

The Provisional Government
to

THE PEOPLE OF IRELAND.

You are now called on to show to the world that you are competent to take your place among nations, that you have a right to claim their recognizance of you as an independent country, by the only satisfactory proof you can furnish of your capability of maintaining your independence, your wresting it from England with your own hands.

In the developement of this system, which has been organised within the last eight months, at the close of internal defeat, and without the hope of foreign assistance; which has been conducted with a tranquillity, mistaken for obedience; which neither the failure of a similar attempt in England has retarded, nor the renewal of hostilities has accelerated; in the developement of this system you will show to the people of England, that there is a spirit of perseverance in this country, beyond their power to calculate or to repress; you will show to them that as long as they think to hold unjust dominion over Ireland, under no change of circumstances can they count on its obedience; under no aspect of affairs can they judge of its intentions; you will show to them that the question which it now behoves them to take into serious and instant consideration, is not, whether they will resist a separation, which it is our fixed determination to effect, but whether or not, *they will drive us beyond separation*; whether they will by a sanguinary resistance create a deadly national antipathy between the two countries, or whether they will take the only means still left, of driving such a sentiment from our minds, a prompt, manly, and sagacious acquiescence in our just and unalterable determination.

If the secrecy with which the present effort has been conducted, shall have led our enemies to suppose that its extent must have been partial, a few days will undeceive them. That confidence, which was once lost, by trusting to external support, and suffering our own means to be gradually undermined, has been again restored. We have been mutually pledged to each other, to look only to our own strength, and that the first introduction of a system of terror, the first attempt to execute an individual in one county, should be the signal of insurrection in all. We have now, without the loss of a man, with our means of communication untouched, brought our plans to the moment when they are ripe for execution, and in the promptitude with which nine-

teen counties will come forward at once to execute them, it will be found that neither confidence nor communication are wanting to the people of Ireland.

In calling on our countrymen to come forward, we feel ourselves bound, at the same time, to justify our claim to their confidence by a precise declaration of our own views. We therefore solemnly declare, that our object is to establish a free and independent republic in Ireland: that the pursuit of this object we will relinquish only with our lives: that we will never, unless at the express call of our country, abandon our post, until the acknowledgment of its independence is obtained from England: and that we will enter into no negotiation (but for exchange of prisoners) with the government of that country while a British army remains in Ireland. Such is the declaration which we call on the people of Ireland to support:—And we call first on that part of Ireland which was once paralyzed by the want of intelligence, to show that to that cause only was its inaction to be attributed; on that part of Ireland which was once foremost, by its fortitude in suffering; on that part of Ireland which once offered to take the salvation of the country on itself; on that part of Ireland where the flame of liberty first glowed; we call upon the NORTH to stand up and shake off their slumber and their oppression.

MEN OF LEINSTER, STAND TO YOUR ARMS.

To the courage which you have already displayed is your country indebted for the confidence which it now feels in its own strength, and for the dismay with which our enemies will be overwhelmed when they shall find this effort to be universal. But men of Leinster, you owe more to your country than the having animated it by your past example; you owe more to your own courage, than the having obtained by it a protection. If six years ago, when you rose without arms, without plan, without co-operation, with more troops against you alone than are now in the country at large, you were able to remain for six weeks in open defiance of the government, and within a few miles of the capital, what will you not now effect, with that capital, and every other part of Ireland ready to support you? But it is not on this head that we have need to address you. No: we now speak to you, and through you, to the rest of Ireland, on a subject, dear to us even, as the success of our country—its honour. You are accused by your enemies of having violated that honour; excesses which they themselves had in their fullest extent provoked, but which they have grossly exaggerated, have been attributed to you. The opportunity of vindicating yourselves by actions is now for the first time before you: and we call upon you to give the lie to such assertions, by carefully avoiding every appearance of plunder, intoxication, or revenge; recollecting that you lost Ireland

before, not from want of courage, but from not having that courage rightly directed by discipline. But we trust that your past sufferings have taught you experience, and that you will respect the declaration which we now make, and which we are determined by every means in our power to enforce.

The nation alone possesses the right of punishing individuals; and whosoever shall put another person to death, except in battle, without a fair trial by his country, is guilty of murder. The intention of the provisional government of Ireland, is to claim from the English government, such Irishmen as have been sold or transported by it for their attachment to freedom; and for this purpose, it will retain as hostages, for their safe return, such adherents of that government as shall fall into its hands. It therefore calls upon the people to respect those hostages, and to recollect, that in spilling their blood, they would leave their own countrymen in the hands of their enemies.

The intention of the provisional government is, to resign its functions as soon as the nation shall have chosen its delegates; but in the mean time it is determined to enforce the regulations hereunto subjoined:—It in consequence takes the property of the country under its protection, and will punish with the utmost rigour any person who shall violate that property and thereby injure the present resources and the future prosperity of Ireland.

Whoever refuses to march to whatever part of the country he is ordered, is guilty of disobedience to the government; which alone is competent to decide in what place his services are necessary; and which desires him to recollect, that in whatever part of Ireland he is fighting, he is still fighting for its freedom.

Whoever presumes, by acts or otherwise, to give countenance to the calumny propagated by our enemies, that this is a religious contest, is guilty of the grievous crime of belying the motives of his country. Religious disqualification is but one of the many grievances of which Ireland has to complain. Our intention is to remove not that only, but every other oppression under which we labour. We fight that all of us may have our country, and that done, each of us shall have his religion.

We are aware of the apprehensions which you have expressed, that in quitting your own counties, you leave your wives and children in the hands of your enemies; but on this head have no uneasiness. If there are still men base enough to persecute those who are unable to resist, show them by your victories that we have the power to punish, and by your obedience that we have the power to protect; and we pledge ourselves to you, that these men shall be made to feel, that the safety of every thing they hold dear depends on the conduct they observe to you. Go forth then with confidence, conquer the foreign enemies of your country, and leave to

us the care of preserving its internal tranquillity; recollect, that not only the victory, but also the honour of your country, is placed in your hands; give up your private resentments, and show to the world, that the Irish are not only a brave, but also a generous and forgiving people.

MEN OF MUNSTER AND CONNAUGHT.

You have your instructions; we trust that you will execute them. The example of the rest of your countrymen is now before you; your strength is unbroken—five months ago you were eager to act without any other assistance.—We now call upon you to show what you then declared you only wanted the opportunity of proving; that you possess the same love of liberty and the same courage with which the rest of your countrymen are animated.

We now turn to that portion of our countrymen whose prejudices we had rather overcome by a frank declaration of our intentions, than conquer their persons in the field; and in making this declaration, we do not wish to dwell on events, which, however they may bring ten-fold odium to their authors, must still tend to keep alive in the minds both of the instruments and victims of them, a spirit of animosity which it is our wish to destroy. We will therefore enter into no detail of the atrocities and oppression which Ireland has laboured under during its connection with England; but we justify our determination to separate from that country on the broad historical statement, that during six hundred years she has been unable to conciliate the affections of the people of Ireland; that during that time, five rebellions were entered into to shake off the yoke; that she has been obliged to resort to a system of unprecedented torture in her defence; that she has broken every tie of voluntary connection by taking even the name of independence from Ireland, through the intervention of a parliament notoriously bribed, and not representing the will of the people; that, in her vindication of this measure, she has herself given the justification of the views of the United Irishmen, by declaring in the words of her ministers, "That Ireland never had, and never could enjoy under the then circumstances, the benefit of British connection; that it necessarily must happen, when one country is connected with another, that the interests of the lesser will be borne down by those of the greater." That England had supported and encouraged the English colonists in "their oppression towards the natives of Ireland; that Ireland had been left in a state of ignorance, rudeness and barbarism, worse in its effects, and more degrading in its nature, than that in which it was found six centuries before.†" Now to what cause

* Lord Castlereagh's speech.

† Considerations on the State of Affairs in Ireland, by Lord Auckland.

are these things to be attributed? Did the curse of the Almighty keep alive a spirit of obstinacy in the Irish people for six hundred years? Did the doctrines of the French revolution produce five rebellions? Could the misrepresentations of ambitious and designing men drive from the mind of a whole people the recollection of defeat, and raise the infant from the cradle with the same feelings with which his father sunk into the grave? Will this gross avowal which our enemies have made of their own views, remove none of the calumny that has been thrown upon ours?—Will none of the credit which has been lavished upon them, be transferred to the solemn declaration which we now make in the face of God and our country. We war not against property—We war against no religious sect—We war not against past opinions or prejudices—We war against English domination. We will not, however, deny, that there are some men, who, not because they have supported the government of our oppressors, but because they have violated the common laws of morality, which exist alike under all or under no government; have put it beyond our power to give to them the protection of a government. We will not hazard the influence we may have with the people, and the power it may give us of preventing the excesses of revolution, by undertaking to place in tranquillity, the man who has been guilty of torture, free quarters, rape and murder, by the side of the sufferer or their relations; but in the frankness with which we warn these men of their danger, let those who do not feel that they have passed this boundary of mediation count on their safety.

We hoped for the sake of our enemies to have taken them by surprise, and to have committed the cause of our country before they could have time to commit themselves against it; but though we have not altogether been able to succeed, we are yet rejoiced to find that they have not come forward with promptitude on the side of those who have deceived them, and we now call on them before it is yet too late, not to commit themselves further against a people they are unable to resist, and in support of a government, which, by their own declaration, has forfeited its claim to their allegiance.

To that government in whose hands, though not the issue, at least the features in which the present contest is to be marked, are placed, we now turn. How is it to be decided? is open and honourable force alone to be resorted to, or is it your intention to employ those laws which custom has placed in your hands, and to force us to employ the law of retaliation in our defence?

Of the inefficacy of a system of terror, in preventing the people of Ireland from coming forward to assert their freedom, you have already had experience. Of the effect which such a system will have on our minds in case of success, we have already forewarned you

—We now address to you another consideration.—If the question which is now to receive a solemn, and we trust, final decision, if we have been deceived, reflection would point out that conduct should be resorted to which was the best calculated to produce conviction on our minds. What would that conduct be? It would be to show to us that the difference of strength between the two countries is such, as to render it unnecessary for you to bring out all your force; to show to us that you have something in reserve wherewith to crush hereafter, not only a greater exertion on the part of the people, but a greater exertion, rendered still greater by foreign assistance: it would be to show to us, that what we have vainly supposed to be a prosperity growing beyond your grasp, is only a partial exuberance requiring but the pressure of your hand to reduce it into form. But for your own sake do not resort to a system, which while it increased the acrimony of our minds, would leave us under the melancholy delusion that we had been forced to yield, not to the sound and temperate exertions of superior strength, but to the frantic struggles of weakness concealing itself under desperation. Consider also that the distinction of rebel and enemy is of a very fluctuating nature; that during the course of your own experience you have already been obliged to lay it aside; that should you be obliged to abandon it towards Ireland, you cannot hope to do so as tranquilly as you have done towards America, for in the exasperated state to which you have raised the minds of the Irish people; a people whom you profess to have left in a state of barbarism and ignorance, with what confidence can you say to that people, "while the advantage of cruelty lay upon our side, we slaughtered you without mercy, but the measure of our own blood is beginning to preponderate, it is no longer our interest that this bloody system should continue, show us then that forbearance which we never taught you by precept or example, lay aside your resentments, give quarter to us, and let us mutually forget that we never gave quarter to you." Cease then, we entreat you, uselessly to violate humanity, by resorting to a system inefficacious as an instrument of terror, inefficacious as a mode of defence, inefficacious as a mode of conviction, ruinous to the future relations of the two countries in case of our success, and destructive of those instruments of defence which you will then find it doubly necessary to have preserved unimpaired.—But if your determination be otherwise, hear ours.—We will not imitate you in cruelty: we will put no man to death in cold blood, the prisoners which first fall into our hands shall be treated with the respect due to the unfortunate; but if the life of a single Irish soldier is taken after the battle is over, the orders thenceforth to be issued to the Irish army are neither to give or take quarter. Countrymen, if a cruel necessity forces us to retaliate,

we will bury our resentments in the field of battle; if we are to fall, we will fall where we fight for our country—Fully impressed with this determination, of the necessity of adhering, to which past experience has but too fatally convinced us; fully impressed with the justice of our cause which we now put to issue, we make our last and solemn appeal to the sword and to heaven; and as the cause of Ireland deserves to prosper, may God give it victory.

Conformably to the above Proclamation, the Provisional Government of Ireland decree as follows:

1. From the date and promulgation hereof tithes are for ever abolished, and church lands are the property of the nation.
2. From the same date, all transfers of landed property are prohibited, each person holding what he now possesses, on paying his rent until the national government is established, the national will declared, and the courts of justice organized.
3. From the same date, all transfer of bonds, debentures, and all public securities, are in like manner and form forbidden, and declared void, for the same time, and for same reasons.
4. The Irish generals commanding districts, shall seize such of the partisans of England as may serve for hostages, and shall apprise the English commander opposed to them, that a strict retaliation shall take place if any outrages contrary to the laws of war shall be committed by the troops under his command, or by the partisans of England in the district which he occupies.
5. That the Irish generals are to treat (except where retaliation makes it necessary) the English troops who may fall into their hands, or such Irish as may serve in the regular forces of England, and who shall have acted conformably to the laws of war, as prisoners of war; but all Irish militia, yeomen, or volunteer corps, or bodies of Irish, or individuals, who fourteen days from the promulgation and date hereof, shall be found in arms, shall be considered as rebels, committed for trial, and their properties confiscated.
6. The generals are to assemble court-martials, who are to be sworn to administer justice; who are not to condemn without sufficient evidence, and before whom all military offenders are to be sent instantly for trial.
7. No man is to suffer death by their sentence, except for mutiny; the sentences of such others as are judged worthy of death, shall not be put in execution until the provisional government declares its will, nor are court-martials on any pretext to sentence, nor is any officer to suffer the punishment of flogging, or any species of torture to be inflicted.
8. The generals are to enforce the strictest discipline, and to send offenders immediately

before court-martials, and are enjoined to chase away from the Irish armies all such as shall disgrace themselves by being drunk in presence of the enemy.

9. The generals are to apprise their respective armies, that all military stores, arms, or ammunition, belonging to the English government, be the property of the captors, and the value is to be divided equally without respect to rank between them, except that the widows, orphans, parents, or other heirs of such as gloriously fall in the attack, shall be entitled to a double share.
10. As the English nation has made war on Ireland, all English property, in ships or otherwise, is subject to the same rule, and all transfer of them is forbidden and declared void, in like manner as it is expressed in No. 2 and 3.
11. The generals of the different districts are hereby empowered to confer rank up to colonels inclusive, on such as they conceive to merit it from the nation, but are not to make more colonels than one from fifteen hundred men, nor more lieutenant-colonels than one for every thousand men.
12. The generals shall seize on all sums of public money in the custom-houses in their districts, or in the hands of the different collectors, county treasurers, or other revenue officers, whom they shall render responsible for the sums in their hands. The generals shall pass receipts for the amount, and account to the provisional government for the expenditure.
13. When the people elect their officers up to the colonels, the general is bound to confirm it—no officer can be broke but by sentence of a court-martial.
14. The generals shall correspond with the provisional government, to whom they shall give details of all their operations, they are to correspond with the neighbouring generals, to whom they are to transmit all necessary intelligence, and to co-operate with them.
15. The generals commanding in each county shall as soon as it is cleared of the enemy, assemble the county committee, who shall be elected conformably to the constitution of United Irishmen, all the requisitions necessary for the army shall be made in writing by the generals to the committee, who are hereby empowered and enjoined to pass their receipts for each article to the owners, to the end that they may receive their full value from the nation.
16. The county committee is charged with the civil direction of the county, the care of the national property, and the preservation of order and justice in the county; for which purpose the county committees are to appoint a high sheriff, and one or more sub-sheriffs to execute their orders, a sufficient number of justices of the peace for the county, a high and a sufficient number

of petty constables in each barony, who are respectively charged with the duties now performed by these magistrates.

17. The county of Cork on account of its extent, is to be divided conformably to the boundaries for raising the militia into the counties of north and south Cork, for each of which a county constable, high sheriff and all magistrates above directed are to be appointed.
18. The county committee are hereby empowered and enjoined to issue warrants to apprehend such persons as it shall appear, on sufficient evidence perpetrated murder, torture, or other breaches of the acknowledged laws of war and morality on the people, to the end that they may be tried for those offences, so soon as the competent courts of justice are established by the nation.
19. The county committee shall cause the sheriff or his officers to seize on all the personal and real property of such persons, to put seals on their effects, to appoint proper persons to preserve all such property until the national courts of justice shall have decided on the fate of the proprietors.
20. The county committee shall act in like manner with all state and church lands, parochial estates, and all public lands and edifices.
21. The county committee shall in the interim receive all the rents and debts of such persons and estates, and shall give receipts for the same; shall transmit to the provisional government an exact account of their value, extent and amount, and receive the directions of the provisional government thereon.
22. They shall appoint some proper house in the counties where the sheriff is permanently to reside, and where the county committee shall assemble; they shall cause all the records and papers to be there transferred, arranged, and kept, and the orders of government are there to be transmitted and received.
23. The county committee is hereby empowered to pay out of these effects, or by assessment, reasonable salaries for themselves, the sheriff, justices, and other magistrates whom they shall appoint.
24. They shall keep a written journal of all their proceedings, signed each day by the members of the committee, or a sufficient number of them, for the inspection of government.
25. The county committee shall correspond with government on all the subjects with which they are charged, and transmit to the general of the district such information as they may conceive useful to the public.
26. The county committee shall take care that the state prisoners, however great their offences, shall be treated with humanity, and allow them a sufficient support to the end that all the world may know, that the

Irish nation is not actuated by the spirit of revenge, but of justice.

27. The provisional government, wishing to commit as soon as possible the sovereign authority to the people, direct that each county and city shall elect, agreeably to the constitution of United Irishmen, representatives to meet in Dublin, to whom the moment they assemble, the provisional government will resign its functions; and without presuming to dictate to the people, they beg to suggest, that for the important purpose to which these electors are called, integrity of character should be the first object.
28. The number of representatives being arbitrary, the provisional government have adopted that of the late house of commons, three hundred; and according to the best return of the population of the cities and counties, the following numbers are to be returned from each:—Antrim 13—Armagh 9—Belfast town 1—Carlow 3—Cavan 7—Clare 8—Cork county north 14—Cork county south 14—Cork city 6—Donnegal 10—Down 16—Drogheda 1—Dublin county 4—Dublin city 14—Fermanagh 5—Galway 10—Kerry 9—Kildare 4—Kilkenny 7—King's county 6—Leitrim 5—Limerick co. 10—Limerick city 3—Londonderry 9—Longford 4—Louth 4—Mayo 12—Meath 9—Monaghan 9—Queen's county 6—Roscommon 8—Sligo 6—Tipperary 13—Tyrone 14—Waterford county 6—Waterford city 2—Westmeath 5—Wexford 9—Wicklow 5.
29. In the cities the same sort of regulations as in the counties shall be adopted. The city committee shall appoint one or more sheriffs, as they think proper, and shall take possession of all the public and corporation properties in their jurisdiction, in like manner as is directed for counties.
30. The provisional government strictly exhort and enjoin all magistrates, officers, civil and military, and the whole of the nation, to cause the laws of morality to be enforced and respected; and to execute, as far as in them lies, justice with mercy, by which alone liberty can be established, and the blessings of Divine Providence secured.

*Richard Cowley sworn.—Examined by
Mr. Solicitor General.*

You are a constable of the watch?—Yes, sir.

In what parish?—St. Catherine.

Where is your watch-house?—In Vicars'-street.

Were you there on the 23d of July last?—I was.

Was it attacked that evening?—It was, twice.

Do you recollect any wounded person being carried there that evening?—Yes, lord Kilwarden, as he said himself, and as it appeared afterwards: we were afraid at first to open the door, thinking it was a decoy; but when

he said he was lord Kilwarden, we let him in. We got some blankets and sheets, and a pillow, and put him upon them.

Was he wounded?—He was very much, and about the head; he was bleeding very much.

Did any person come in?—Major Swan came in and said "The villains should be hanged." His lordship desired him "Not to hang them, but to give them the benefit of the law, and a trial;" something to that effect. In the state we were in, I do not exactly remember the words.

How soon did he die afterwards?—In a few minutes.

[This witness was not cross-examined].

Lord Norbury.—I do not see, Mr. Attorney-general, how you can make this evidence, unless you can connect it in some manner, by showing the cause of his death.

Mr. Attorney General.—My lord, we will prove how he came by the wounds which were the cause of his death.

Stewart Hume Douglas, Esq. sworn.—Examined by Mr. Plunket.

Are you an officer in his majesty's service?—Yes, a lieutenant in the 21st regiment.

Where were you stationed upon the 23rd of July last?—At the barrack on the Coombe.

Did any thing particular happen to you upon the evening of that day?—About ten o'clock that evening, the rebels came in a great body, and made a charge upon my men. Three of them came first, and fired at my party, by which two were wounded. I fired upon the rebels, and I heard the voice of some person urging them to move forward. They did not seem to wish it, upon which I gave them another volley; they retreated, and I gave them a third volley as they turned the corner of Francis-street, for they all made off through Francis-street.

What guard was this?—The Coombe guard; there is a barrack there for a company.

At what hour was this?—About a quarter past ten.

Did you find any thing after this?—We found fifteen pikes, and four men dead upon the ground.

Mr. Attorney General.—My lord, this gentleman behaved with great steadiness and gallantry in Thomas-street, in a previous part of the evening; but were I to go into a detail of his conduct, it would only be going over the same ground. We therefore think it unnecessary to examine him farther upon the present occasion.

[This witness was not cross-examined.]

Thomas Moorehead sworn.—Examined by Mr. Mayne.

Pray, sir, were you in any employment with lord Kilwarden?—I was, sir.

In what employment?—I was postilion with him.

Did you drive his carriage on the night of the 23rd of July last?—I did.

From Newlands his country house until you came to town?—I did.

Who were in the carriage?—My lord and Mr. Richard Wolfe and Miss Wolfe.

I believe Mr. Richard Wolfe was his lordship's nephew and a clergyman?—He was.

About what time did you get to town?—About half past nine.

In what part of the town did you first see any persons in arms?—In Thomas-street.

Was that at the time you mention, at half-past nine?—It was.

Was it then dark?—Not quite dark.

What did you first see of armed men?—I saw different men come out of houses. I thought at first they were the watchmen going to their stands.

Were there many?—Not many at first, only two or three together.

You met with nothing particular till that time?—No.

Did they do any thing to the carriage?—Not till it was stopped.

Were there many about it then?—A great many.

Had they arms?—They had.

What arms had they?—I saw pikes, and pistols, and blunderbusses.

Can you judge of the number of persons?—I cannot.

Were there many?—A great many.

More than you could count?—There was.

And they had arms of the kind you mention?—They had.

Did they know who was in the carriage?—Yes, part of them stood at the horses heads, and another part opened both the carriage doors, and when the doors were opened, they said they had lord Kilwarden.

Did you hear him say any thing?—No, but some of them said, there was a lady in the carriage, and that they would spare her. They took her out, and bid her go about her business.

Was she permitted to go without personal injury?—She was.

Did you hear any thing pass between his lordship and the mob?—Something passed; he was not willing to come out of the carriage but there was such a number about the carriage, and they would not permit me to look behind, that I could not hear what they said.

What then happened?—After some little time they dragged his lordship out and stabbed him and struck him on the head.

Did you hear him say any thing?—I heard him call for mercy.

Were there many?—A great many, more than could get near him, they were fighting to see who would get most blows at him.

Did he fall there?—He did.

Did you see him fall?—I did.

Did you see Mr. Wolfe?—I saw nothing of

him from the time I saw him run from the carriage, till I saw him next morning dead.

You saw him run?—I did.

Was he pursued by men with pikes?—He was.

You saw him dead next morning?—I did.

You were suffered to drive off the carriage?—I was.

Mr. Attorney General.—My lord we close the case here on the part of the crown.

DEFENCE.

Mr. Ball.—My Lords, and Gentlemen of the Jury;—By the peculiar indulgence of the law of this country, the prisoner is intitled, upon this trial for the highest crime known to the law, to the advantage of having counsel to state his case and argue upon it. However likely the prisoner is in this particular instance, not to derive advantage from that indulgence, I think he does not much stand in need of it upon this occasion; for though it were possible for him to have selected a less humble advocate than myself, I feel that he does not require the superior talents of the gentlemen on the other side to defend him; because he has had advantages during the progress of the trial greater and more important to him, than the abilities of the first advocate at the bar.

Gentlemen, the reason why the law gives to persons charged with high treason the peculiar indulgence of advocates to defend them is, because the crime is of such a nature, that it may in some instances draw down upon the party accused, the peculiar resentment of government and the ministry; and also because in every instance it must excite in the minds of the hearers, extreme and extraordinary feelings of animosity and indignation. In order, therefore, to protect the prosecuted party, as far as can be, from that resentment of the government, and to guard him against unfavourable impressions in the minds of the jury, a special act of parliament was passed to give him the benefit of counsel.

Gentlemen, I feel in the present instance, and I am bound to confess, that neither of these reasons appear, nor can be supposed to exist. The conduct of the government of this country ever since the lamentable period so often alluded to, has demonstrated the purest spirit of mildness and mercy. Instead of bringing the prisoner to a tribunal of this kind, the government under the circumstances which were stated and partly proved, might have brought him before a tribunal, where the investigation of his guilt or innocence would have been much shorter indeed—where the principles of evidence would not be much attended to—where deliberation would not govern the proceedings—and where he could not have had any of the advantages which he now enjoys.

Gentlemen, the government in this instance (which I hope will be followed), by thus exercising the jurisdiction of the law, in its ordinary course, have given you an example of

moderation, which I trust you will adopt, as well as the lesson which was given by a venerable person, whose absence I lament as much as any person can, with a calmness of mind, which has never been equalled under such circumstances, he entreated, "Let them not fall in wrath, in haste, or in anger, but by the established rules of law." By those rules I have no doubt that the prisoner will be tried.

Gentlemen, his majesty's attorney-general, in the outset of this case, gave you a precaution highly becoming him and his situation, though it was not a necessary part of his official duty,—that you should discharge from your minds entirely every thing you had heard before you came into the box. He might have added, and I am sure he intended that you should also discharge from your minds entirely every thing which might be stated, if not proved in evidence. He might even have gone farther and have added, what I am sure the Court will add,—that you will discharge from your minds every fact with which (though proved) the prisoner is not directly and intimately connected.

Gentlemen, the examination of the witnesses produced upon the trial has taken up several hours. Nine witnesses have been examined, and the counsel for the prisoner did not think it necessary to ask any question of five of them; because, though they stated lamentable facts, they did not state anything connected with, or affecting the prisoner. The two first witnesses did not state any thing in the slightest degree affecting the prisoner; yet it was thought necessary to ask them a few questions in order to show the nature of that deplorable event. Some plan of a dangerous conspiracy appeared—it was prepared to some extent; and it is surprising, that it was so limited as has been proved by the first witness (who may be a suspicious witness, and I am not desirous of standing between you and his credit); the business was not much known through the working classes of the people.

Mr. Baron Daly.—The witness did not state any fact of that nature: he said, it might be so.

Mr. Ball.—My lord, he said, he did not know of it till Friday. He said, he might have known something of the kind generally: but the particular time, when it was to take place, he did not specify any knowledge of till Friday, and he understood, that it was not generally known to the working people. He is a person who has been selected by the prosecutor in this instance, as a person acquainted with the conspiracy, to state the particulars of it. He must be received as a principal conspirator himself, fully acquainted with and disclosing the subject; and neither the Court, nor the jury can extend it farther. If those who were at the head and had the arrangement of the plan did not communicate it to him, how can you think they would disclose it to those in an humbler sphere of life, who were ignorant of those who promoted it?

Then, gentlemen, it follows, that there must have been a number of persons in the lower walks of life utterly unacquainted with it. Indeed, if the witnesses were silent in that particular, it might be implied from the secretness of the transaction, that the knowledge of it must have been confined to a few, and that the great mass of the people were utterly unapprised of it.

This witness, gentlemen, has given it to you as his opinion, and you must adopt it as your own; not only from the reasonableness of it, but because he is the only witness who in that respect has been submitted to the prisoner for cross-examination. He states, that any individual man, who was not engaged in the conspiracy might be employed on that day in his usual avocations and employments, and he states it as his opinion, that if he had seen a man employed in the course of that day about his ordinary calling, he would have concluded, that he was totally ignorant of the conspiracy. And yet, gentlemen, this is the person chosen as the engine, through whom you are to understand the nature of the transaction, and who, it may be supposed, was best acquainted with it, and that is his opinion.

Then, gentlemen, is it, or is it not possible, under the circumstances of this case, as they are stated and proved as far as they have been proved, is it not, and I entreat you will put the question to yourselves, without suffering any quick or irritable feelings, natural to you, as men, to influence you, whether it is not possible, that a man, ignorant of this conspiracy, might not be innocently involved in a numerous mob, which started up so suddenly in many parts of the city. Mr. Wilson stated to you, that such was the case of a gentleman, who was compelled to take a pike and to appear as a leader. If a man of that rank could be forced into that situation even for a moment, is it not possible, that such a fate might befall a man of the condition of the prisoner? an honest and industrious working man. If the one thing might happen, which you must believe, because the prosecutor tells it, *à multo fortiori* might it happen, that the rabble might force a person of the humble rank of the prisoner; they compelled a gentleman, even a loyal gentleman, to appear as their leader, and to take an active part, as a leader: and what is there incredible in a similar force acting upon an ignorant stranger?

Now, gentlemen, see what the evidence is, which applies to the prisoner at the bar. There are but two witnesses who speak to his person; and from thence you are to collect something in his favour. The accomplice in the conspiracy does not pretend to know him. This alone ought to incline you to think his case extremely doubtful; and if there be a doubt, it ought to ensure his acquittal. Who have attempted to identify him?—two persons who never saw him before; and under such circumstances, when you come to con-

sider them, as show that their knowledge of the man must be extremely doubtful indeed. If there shall be any room for you to say, that these two persons did not accurately know and recollect the prisoner, so as to identify him now—I say, if there be a doubt in that respect, the bench will tell you, that such a doubt is, in your minds, to be the signal of acquittal; and that there ought to be such a doubt I will undertake to demonstrate, and if I do, the acquittal of the prisoner must be certain.

Gentlemen, the only evidence which in the smallest degree tended to affect the prisoner, was that given by the officer and by the soldier; and if you compare them together, you will find that they cannot be consistent, and literally true. I do not mean to charge them with intentional falsehood, and I think it impossible that government could bring forward persons whom they doubted;—but I mean to say, that it is impossible their evidence can be literally true.

The officer said it was so dark that he could not see the first pikeman until he came plump upon him in the middle of the street.—But he has gone farther, because he says he believes, from the extreme darkness, that a man standing by himself, was neither informed by his eye nor his ear of the approach of the military, until he was seized. Consider that evidence for a moment: conceive a night so dark, that the pikemen could not perceive the approach of soldiers in scarlet uniforms, with feathers in their caps, and burnished arms. The assistance of his ear did not enable him to observe their approach, and it is observable, that an impression upon one sense rouses another to exertion—if you hear any thing, you naturally look for it—consider then the fact stated: a man standing out at a distance, detached from the main body—on the watch for either rebels, or military, yet men with fixed bayonets, dressed and accoutred as I have described, are not discovered, until they came upon him;—he had no time to escape—not even to drop his pike without observation; and he, who from the description of his situation must have been supposed to be particularly vigilant, had no opportunity to retire.

Gentlemen, suppose all this to be true, and impress upon your minds that cloud of darkness which has been represented, and then examine the testimony of the soldier Stott:—he says, he heard the prisoner call out, "*Royal Pikemen*." I will say no more upon the expression said to have been used than this, it is extremely improbable; however you or I might use it, as a signal of encouragement, it is not likely that a rebel should use it upon that night.

But what more does he say,—that the man, who uttered these words threw away his pike. Compare the situation of the soldier with that of the adjutant and the man with the pike whom they met in the street, and see what the inference is. If adjutant Brady was not visi-

ble to the supposed pikeman, until he was within a yard of him, by what power of vision or of hearing was it, that the soldier in the second division of forty men could distinguish a man in such a situation as the prisoner was said to be in? I observed that the soldier felt this difficulty, he began to perceive that if what the officer swore was true, it was utterly impossible from the distance, that he the soldier could distinctly know the man who threw away the pike. How does he solve that difficulty? He says it was the flash of the muskets that disclosed the person of the man!

Now, gentlemen, analyze for a moment the picture which he has thus drawn, and what does it amount to?—I knew, says he, by the flash of the muskets, that the hand which threw away the pike belonged to the mouth which spoke, and that mouth to the same man who threw down the pike!—Whether this witness is swearing intentionally false is not now the question; but the question for you to determine is this—Is it in the nature of things that it can be true? Is it consistent with the account given by the officer?

I will put a familiar case: Suppose this were the ordinary case of a robbery, or an assault upon your person (a case in which your feelings would not be inflamed, nor loyal principles filled with anxiety—not that innocence might be punished, but that the guilty might suffer)—would you for a moment listen to such evidence?—Why then, the law is exactly the same; and the Bench will tell you, that you are not to apply any rules of evidence, or mode of judging of the credit of witnesses, in cases of this kind, which would not apply in the case of any ordinary malefactor.—If you would believe a strange and inconsistent story, upon the trial of a man for robbing your orchard, or fact of that trivial nature, there is no reason why you should not believe the soldier.—The prisoner could not in that case complain; but, I trust, that, as your good sense would reject such evidence in common and trivial cases, so you may equally reject it in one the most important; that a tale so fraught with absurdity and inconsistency as to render it impossible to be true, cannot be received by you, and that you cannot reconcile it to your humanity, upon such testimony to doom a fellow-creature to death.

Gentlemen, there is another defect in the evidence.—You saw the confusion between the soldier and the officer in their testimony respecting the taking up of this man; see whether that does not raise another doubt, and if so, that will ensure the acquittal of the prisoner. See the confusion which took place upon the occasion, and the misfortune which has arisen to the prisoner from that confusion. If you find the prisoner guilty of the fact stated, of having a pike, and throwing it away, you have not the best evidence of that fact which might be had. With regard to that

fact, what is the evidence?—The officer did not see the pike, but a soldier gave him a pike, and said, *This is his pike.*—Was that soldier produced?—until he be, you will have to decide upon that fact, knowing that the best evidence of it has been kept out of your reach.—The soldier who took up the pike is not produced; he gave it to the officer, and the officer tells you what was said, and are you to find a verdict of conviction upon what is stated by hearsay?

But it may be said, the prisoner heard it, and made no reply. Gentlemen, with regard to the evidence of declarations made in the prisoner's presence, when not contradicted, you ought to be satisfied that the prisoner heard them. Now no witness here has sworn that the prisoner heard these words, or even that he must have heard them, or that he had an opportunity of contradicting them.

Suppose any loyal yeoman had been forced among that party, could he not assume the appearance of acting with them, to save his own life? Why then, what was the conduct of the prisoner?—Conscious that he was taken up unlawfully, he endeavours to release himself; they were the exertions of a man to obtain safety. It appears that his life was in danger from the soldiery; the officer had some difficulty in preventing the soldiers from dispatching him, and it is not surprising that in such a state he did not bear particular expressions uttered by one individual to another. It appears, that he had not a very good hearing, because, if the evidence be true, he did not hear the approach of the army; and in addition to all this, see the dreadful inconvenience he suffers, from the inaccuracy between the officer and the soldiers. One of the soldiers differed with him as to the identity of the prisoner. One conceived he was the man who stood detached in the street,—that soldier is not produced,—we do not know him,—we did not know but he would have been produced, instead of the officer, who gives it as his opinion that the prisoner is not the man who stood in the street, but was taken in another place. Gentlemen, if the law were the same here as in England, we should have known it. I do not mention this difference to make any unfavourable impression, or for any inflammatory purpose; but there he would be furnished with a list of the witnesses against him, and he would have known the particular fact that was to be proved against him, and he would have known which of the soldiers would have been produced, and would have been prepared accordingly.

But there is another inconvenience:—no fact has been proved by more than one witness. In England the jury cannot credit one single witness in the crime of high-treason.—That is a statute, which in my humble judgment ought never to have been enacted, because it was already enacted in the heart of

every man, who had a heart, or judgment. What ! is the crime of high-treason no higher than the crime of perjury ;—Perjury is a very grievous offence, no doubt ; yet it is trivial and insignificant in comparison of treason ; and when a jury is called upon for the conviction of a man prosecuted for high-treason, they are called upon to say, that it is more likely one man would commit treason, than another would commit the subordinate crime of perjury ; that it is easier to be credited, and that less proof will establish it. The legislature of England, seeing that pre-judice had led juries into dangerous and fatal errors, from believing a single witness, came forward and said, we will correct that error by a law which is a declaratory one, and which was occasioned by the prejudices and mistakes of juries, and it was enacted, that no one should be convicted save upon the testimony of two witnesses. Where are two witnesses proving the fact in this case ?—There is not one witness entitled to your credit.

But take the evidence of the soldier not to have been impeached, and not to be affected at all by the directly contradictory evidence given by the officer ; yet he is wholly unsupported as to the circumstance of the pike ; and you are to consider and weigh how far you are to give credit even to that single fact. Combine all the circumstances together, and do not suffer yourselves to be led away by any inclination to condemn ; a disposition to include guilt in accusation. Gentlemen it is human nature. You have heard a phrase used by women and children, when a man is accused of any atrocious crime, they exclaim, He ought to be hanged without judge or jury. Does not that imply, that his guilt or innocence is not to be investigated ? But is that prejudice confined to the ignorance of the lower orders ? Look at the higher orders, and you will see that with them accusation implies more or less of conviction. Go up to the bench, and there alone prejudice is completely removed ; because the judge is early taught by his education to resist the prejudices of nature. It is not for you, gentlemen, not so educated, to separate and detach those feelings ; but I know you are men and honourable men, and that you have fortitude to throw off any inclination to conviction, let what will be the consequence to yourselves or to the state. You will speak in the language of the law, "The innocent ought not to suffer—the guilty alone should suffer"—those who have been proved to be guilty, without leaving upon your mind a single *scintilla* of doubt. What ! cannot you doubt where the witnesses are confused ? where a multitude may be involved in the vortex of accusation, and where all cannot be guilty ?

Gentlemen, if all this be sufficient to raise a doubt of the prisoner's guilt, the facts which I am to state will confirm it farther, and entitle him to your verdict in his favour.

This is stated to have been an ebullition caused by the leaven of the old rebellion : so I believe it to be. The incendiaries who set it on, thought fit to resort to those only who were implicated in the late rebellion, as in the instance of Mac Cabe ; and therefore it becomes an additional circumstance to raise a doubt in favour of the prisoner, if he were not of that description, which would invite disclosure from the leaders of the conspiracy.

If instead of being full of anxiety, like a man watching for the business of the approaching night, instead of calling his troubled spirits into council, and being disturbed by the agitations natural to such a state, he was occupied in his daily and ordinary occupations during the whole of that day upon which the insurrection broke out ; that he returned peaceably home after the labours of the day were over, and that he has through life borne an honest character as an industrious man, your doubt will be converted into a certainty of his innocence ; and you will not have to lament, "We were obliged to acquit him, though we believed him to be guilty ;" such will not be your feelings upon this occasion.

Gentlemen, the prisoner is a dealer in an humble line ; he purchases and sells skins. He had been employed in this business the whole day, and was upon his way home when he was met in the street ; not in the manner you have been told, because you have been told different ways, but returning quietly home after his ordinary business. If you hear this ; and that he was not implicated in the former rebellion, but upon every occasion acted the part of an honest upright man, you will pronounce a verdict in his favour.

Francis Coghlan sworn.—Examined by Mr. Bethel.

Do you know the prisoner at the bar ?—I do.

What is his business ?—He is in the skin dealing line.

Do you remember the 23rd of July last ?—I do.

Did you go that day to purchase any articles in company with the prisoner ?—I did.

What did you purchase ?—Some pig-skins and calf-skins.

From whom ?—From one Kearney in Thomas-street.

Did you see him on the morning of the 23rd ?—I did. I went for the skins, and took them out of the place ; the prisoner told me he had a man for them.

Were you joined with him in the sale of the skins ?—I was.

What time were you engaged with him that day ?—I met him at ten in the morning, and staid till eight in the evening.

Where did you leave him then ?—At Con-naughty's in Watling-street, a public house.

Where did the prisoner live ?—At Bow-bridge.

Is not Watling-street the way to Bow-bridge from the city side?—It is.

What business do you follow?—A skinner.

Where did you go when you left him?—I went home to my own family, with two of the skins which remained unsold.

Francis Coghlan cross-examined by
Mr. Attorney-General.

Where do you live?—In Watling-street.

Have you always lived there?—I was born and always lived there.

Did you ever live upon Aston's-quay?—No.

Where did you go upon leaving the prisoner?—I went home,

When did you first hear of the disturbances that night?—I never heard of it at all, until I went out into my yard.

At what hour was that?—About ten o'clock, How long did you continue drinking with the prisoner?—From six till eight o'clock.

How many persons were there?—There was no other person.

In going from Watling-street to Bow-bridge, would you go through Thomas-street?—No; it is not the shortest way.

Patrick Connaughty sworn.—Examined by
Mr. Ball

Do you recollect the night of the 23rd of July last?—I do.

Did you see the prisoner that evening?—I did.

Where?—In my own house.

At what time?—It was near ten o'clock.

Did he occasionally frequent your house?—He did.

What state was he in?—In a state of intoxication.

How long did he stay?—I cannot say, the house was very throng.

What was his general time of leaving your house?—Sometimes he would stay till twelve or one o'clock. He was generally the last person who would leave my house.

Patrick Connaughty cross-examined by
Mr. Plunket.

How long have you kept a public-house?—Two years.

A very respectable one?—I hope so.

You are very attentive to the company you entertain, and careful of their morals?—I have.

What marks have they given you of their estimation of your good conduct?—I cannot say.

Were you ever fined by them for improper conduct?—I have, very often. I have been fined for selling spirits on Sunday.

How many persons were in your house that night?—No one but himself, when he went away.

Did you see Coghlan there?—No, the house was so throng.

Then if he was there, he must have gone

away when the house was throng?—He must.

Can you tell the names of any other persons who were there?—One Frank Delman was there.

Who is he?—He works at the Castle, and is with the lord lieutenant.

Had he any business at the Castle that night?—I cannot say; I gave him some change.

Were there any other persons?—There were some soldiers.

What are their names?—I cannot say.

Mention the name of any other person?—There was one Dodd, who works with Glanville of Thomas-street.

What time did he leave your house?—A few minutes before the prisoner. He was the last man who staid; and when the last glass was drinking, I heard the noise of the business going on in Thomas-street. I took the glass from the prisoner, and would not let him finish it as he was intoxicated.

What was the business?—A rising, or a rebellion, or what you please to call it.

Whom did you desire to go away?—I desired them all to go, and they went; but he remained, and my sister brought him another glass, which I took from him.

Where does he live?—In Bow-bridge.

And can you assign any reason why he should, after you told him of the rising in Thomas-street, go that way to Bow-bridge?—I cannot.

Did you go out yourself that evening after?—I did not.

Nor let any person in?—No.

Jury.—Have you any clock in your house?—I have.

Did you look at it at the time you speak of?—I did not.

Walter Kearney sworn.—Examined by
Mr. Bethel.

Where do you live?—In Thomas-street.

What business do you follow?—Principally dealing in skins and feathers.

Do you know the prisoner?—I do.

Do you remember the 23rd of July last?—I do.

Did you see him upon that day?—I do not recollect.

Have you known him long?—Since I went into business, four or five years ago. He has bought articles from me which he sells by retail.

What has been his general character during the time you have known him?—A very stirring, industrious creature; but addicted to liquor.

You knew him but three or four years?—Yes.

You did not know him in the last rebellion?—I did not.

Have you an apprentice?—I have.

Is he here?—No, he has lost the use of his limbs,

Thomas Fitzsimons sworn.—Examined by
Mr. Bethel.

Do you know the prisoner at the bar?—I do.

Where do you reside?—In Irwin-street, Bow-bridge.

How long have you known him?—Three or four years that he lived in counsellor Bethel's concerns; he was an honest industrious man, during that time.

William Smith sworn.—Examined by
Mr. Ball.

Do you know the prisoner?—I do, near six years.

Did you know him in 1798?—I did, I have bought skins from him. I have one of his sons articled to me.

What is his general character?—I always took him to be an honest industrious man, working for the support of his family.

Where do you live?—In Watling-street, in No. 52. I served my apprenticeship in Leeds.

William Smith cross-examined by Mr. Mayne.

Do you live in Watling-street now?—Yes.

Are there any parties in that street?—I cannot say, I do not meddle with matters of that kind.

What countryman are you?—An Englishman.

Have you any property in this country?—I won't tell you that.

I have no wish to know the extent of it, but from what I can collect from you, sir, you know nothing about the prisoner more than that he sold skins. You seem to be in a different situation in life from the prisoner. I want to know whether there subsisted between you that kind of intimacy, that you had much communication with him?—No, sir, there was no communication of that sort.

William Lloyd sworn.—Examined by
Mr. Bethel.

Where do you live?—At Stoneybatter.

What business do you follow?—I keep an inn there, and have some land.

Have you known the prisoner?—I have for several years.

Did you know him in the last rebellion?—I did.

Did you ever hear any charge against him for disloyalty?—I did not.

What has been his character for integrity?—I never heard any impeachment against him.

[Here the evidence closed.]

Mr. Bethel, on the part of the prisoner, waved his right to observe upon the evidence—and

Mr. Solicitor General waved his right to reply.

SUMMING UP.

Lord Norbury.—Gentlemen of the Jury;—I am sure you must be perfectly impressed with the solemnity of this occasion. You have been very honourably cautioned and advised, before I had an opportunity of addressing you, to divest your minds altogether of every circumstance which you may have heard, or even felt before you came into the box. I know you well enough to believe, that you want no exhortation from me upon such a subject. However, as you have a most important duty to discharge, and it having devolved upon me to sum up the evidence of this trial, I shall endeavour to do it in as clear and short a manner as is possible, consistently with such a detail of it as may bring the issue which you are to try, and the facts which bear upon it fairly before you.

Gentlemen, you have heard the indictment read; I shall shortly state the substance of it to you; divested of the legal and technical difficulties, that might attach upon it in a more complicated case; but here the clearness of your understandings has not been distracted by a dilated statement of facts, by a tedious ambiguity of evidence, or the subtleties of metaphysical reasoning; and though the present trial has preceded to some considerable length, I observe that your attention has not relaxed: and you will be able to discharge your duty without having your recollection deranged or your attention disturbed by any adjournment of the trial, which I trust may never again become necessary in the administration of criminal justice.

Gentlemen, this indictment contains two counts, founded upon the statute of treasons, of so old a date as the 25th Edward 3rd; and there are but two clauses of that statute which form the subject of your inquiry. The first relates to the compassing and imagining the death of the king; and the other to levying public war against his crown and dignity; on them are framed the counts in the indictment. But it is also necessary, in indictments of this nature, to state such overt acts as may be supported by evidence; and the overt acts here to support the first count are, that the prisoner did, in furtherance of such treason, conspire with others to levy war and insurrection, and to make cruel slaughter of the king's subjects. The second is, that he did for the purposes aforesaid, arm himself with a pike; and the third is, that he did associate himself with a number of persons armed with hostile weapons, and in military array did levy war against the king.

I know that these subjects require some precision, and therefore I thought it my duty at the present period, on the first trial which has taken place at this commission, to state with a guarded accuracy, some principles of law, taken from adjudged authorities, which may assist you in the course of your investigation.

I should only repeat to you, that which has been urged of late in the hearing of you all, were I to dwell upon this subject long.

The acts which are capable of demonstrating the wicked intention, are as various as the suggestions of the most fertile conceptions of the most depraved imaginations. They are called "overt acts," and when the overt acts laid are proved to have been committed, then devolves upon you the very important duty of weighing well and considering whether the act done and related to you was so done in furtherance of the traitorous intention, as stated; and in order to enable you to do that, I am further to inform you, that it has been long settled law, that not only direct and immediate attempts against the king's life, but all remoter steps that tend within reasonable probability to bring about that event, if in furtherance of the treasonable design amount to high treason.

But, gentlemen, whatever embarrassments may have arisen in some cases which have been adjudged, I think I am bound upon such an occasion as this to tell you of what never has been doubted nor created embarrassment since the law of treason has been enacted and declared. It never was doubted but that a rising in force, with great numbers, and arrayed with the declared and avowed view and design to overthrow the government existing in the country, and to seize the power and authority of the government into the hands of insurgents, was high treason.

I think it right, however, before I detail the evidence, to direct your attention to two distinct subjects, and to simplify your consideration of them.

Those two distinct subjects are, first, whether such a treason and rebellion, as stated in the indictment, did exist;—to wit, a treason founded upon a conspiracy of insurgents to overturn the government, tending even remotely, to bring the king's life in danger, and to seize the government into the hands of the insurgents.

Having proceeded so far, the next step, and the only one remaining for your consideration, is, whether the prisoner at the bar, upon the evidence given, as relating to the overt acts in the indictment, did commit that overt act in furtherance of such wicked design, and thereby was guilty of the treason, the existence of which is the first step for your consideration.

Now, there seem to be some facts in this case so clear and undeniable, that it is not necessary for me to labour them with you, or even to detail the evidence respecting them. For in truth it is not controverted, upon the evidence given, or upon the defence made or arguments of counsel for the prisoner, that there was upon the 23rd of July last, a dreadful insurrection and rebellion, which did rage within the city of Dublin; of such an insurrection you have abundant evidence, and that on that night a body of men in great number,

did rise and arm themselves with pikes, upon a preconcerted plan, with the motive and objects attributed to them. You have heard that evidence, it remains uncontroverted, and if you believe it, I am bound to tell you what the deduction of law is,—namely, that a number of persons assembling, and embarking in a project to seize the seat of government, to put down its lawful authority, to overturn the royal power, and to wade through blood and slaughter to such a republic in Ireland as is proclaimed by that paper which has been given in evidence, for the purpose and design of substituting in the room of the legal government, the provisional government of sanguinary rebels, the necessary consequences flowing out of such a conspiracy, and the obvious intentions were to dethrone and depose the king, and such object must have been preceded by a malignant intention and imagination existing in the minds of those who formed it, of compassing and imagining the death of the king. Where such a project was conceived, of deposing the king from his royal authority, from the natural order and relation of things, it draws after it a necessary and incontrovertible presumption of law and fact, of such malignant imagination, and preconceived intention.

These are general positions, which have been sanctioned by the greatest authorities. I have endeavoured to compress them with as much brevity and precision as I could, and with the more direct view, that this case may not stand embarrassed with those complicated difficulties, which you may have heard of as arising on other trials in the other part of the united kingdom. It would be equivocating with justice to embarrass this case with matter which does not belong to it, if you believe the evidence you have heard.

With regard to the facts of the case, I shall endeavour to state them to you from the evidence on my notes, and if I shall mistake in a single point, you will have an opportunity of correcting me, and my learned brethren will assist me in my progress.

Gentlemen, upon the subject of levying war, I rather prefer reading a position from authority, than from any note of my own. In sir Michael Foster's admirable treatise it is laid down, that an assembly armed and arrayed in a warlike manner for any treasonable purpose is *bellum levatum*, until acted upon, — but afterwards when acted upon it is *bellum percussum*;—and it has been held, that assembling, marching and acting in hostile array sufficiently denoted the offence, if that be done for a treasonable purpose. And it has been also determined that attacking the king's forces when acting under his authority, with a body hostilely arrayed is not only *bellum levatum* but *bellum percussum*.

Gentlemen, I have, I hope made these positions intelligible to you. I shall now commence with the evidence as given, which is fortunately fresh upon your memory. Your

minds are sufficiently, collected and I shall not trespass so far upon you, as to bring you into any difficulty.

[His lordship then stated the evidence minutely from his notes, making occasional observations. When he came to state the proclamation, he said.]

You observe how the several parts of this mass of evidence are connected.

This proclamation is as wicked in principle as it is conclusive of its design; it shows clearly from the composition, from the place where it was found in the general rebel depôt, and in a damp state just issued from the press, an active instrument of dreadful preparation. None can doubt the object of this accumulated mischief, hand grenades and other implements of destruction, thus concealed and collected; but when you find the banditti of ruffians rushing forth from that very depôt at the moment of darkness, to perpetrate their horrid atrocities of foulest and most cruel murders, with a barbarous exultation that Dublin was their own, the proclamation speaks for itself, and you are able to trace by their bloody track, the distinguished footsteps of the provisional government.

Gentlemen, the next proposition for you to consider is, how the prisoner, upon the evidence given, was implicated and took a part in this conspiracy and horrid rebellion, for with regard to its existence there is no doubt in the case.

If you shall be of opinion upon due consideration of the evidence that it has established a proof of a conspiracy, of treason thus acted on, it is settled law, that any man taking a part in that conspiracy, by overt-acts demonstrative of intention, is implicated in the general guilt. But as to the prisoner, I am now to intreat of you to recollect that although you may be clear of the treason having existed, you should receive no impression from thence unfavorable to him, unless he shall, upon the most cautious deliberation and convincing proof, appear to have taken such a part therein as to have involved him in guilt.

The degree of credit you give the evidence that may tend to implicate the prisoner, I leave entirely to you; I do not interfere with it—that is for your judgment. But if you do believe the evidence, see what it is;—that in the night of this horrid business, the prisoner is found in Thomas-street, the principal scene of horrid mischief, with a pike in his hand; a weapon of the same nature and description as those found in the depôt, where they appear to have been collected for treasonable purposes. The king's troops, engaged in the act of suppressing the insurrection came suddenly upon him; he instantly flings down the pike, the prisoner and the pike are immediately secured a few yards from the great body of rebels then rushing on the king's troops, he the prisoner having previously called out, "Royal pike men, come on."

The prisoner makes violent resistance and endeavours to escape, which endeavours he continued with unremitting struggles for a considerable time; it is for you to discriminate whether this was the conduct of an innocent man who might have been terrified, or of a man who from a consciousness of guilt was endeavouring to make his escape; and you will decide whether he was there by accident and unconnected with the transactions of others, or whether he was acting with the insurgents and encouraging them to come on to the attack of the troops; if so, the man who thus joins and acts with rebels is implicated in the whole of their treason.

I am the more anxious to state the law and the evidence accurately, because at a season of such awful solemnity as the present, it is incumbent upon us to show the public, with what deliberation and temper the law proceeds to investigate the case of every individual criminally charged—with what anxiety the lives of all innocent men are guarded.—The grand jury are appointed to consult privately in their chamber; the prisoner is served with a copy of his indictment, and he is allowed a number of days to prepare himself—he has counsel of his own selection.—It is of infinite importance to the public to know and understand, what an excellent law it is under which we live—that the administration of justice exists in its fullest perfection.—I am satisfied that whatever may have lately happened to irritate the public mind against the authors of daring outrage, you are as dispassionate and cool in deciding upon the fact, as the Bench is anxious in laying down the law for your instruction. Our due administration of justice according to the British constitution, is the admiration of the world; the law is our best security and birthright, the preservation of it engages every good man in the defence of the country, and if any thing could raise it higher in the general estimation, it is that even in the most disturbed times, that law shall be administered with unruffled temper and calm deliberation.

Gentlemen, I have one word more of advice to give you, where you have the life of the prisoner to dispose of, be just to him, and just to the country; and if you can entertain a rational and well-founded doubt of the guilt of the prisoner acquit him. I have kept out of your view every thing that did not belong to the particular case of the prisoner; though I feel with as much anxiety as any man, the lamentable events of that evening to which these unhappy transactions relate,—though a man was destroyed that evening who was the best object of our affections, whom we all loved and admired, yet that should not operate upon your feelings, nor warp your judgment, nor should it bear at all upon the case, farther than as it shows under the accumulation of concomitant facts, that there was a cruel rebellion existing at the time.

There was a sentiment of benignity which

passed the lips of that great and good man whose loss we deplore, while his soul was yet hovering between his country and his God, which should immortalize his memory, and you have been eloquently reminded in the statement of the case for the prosecution, of the benevolent and pious exhortation of his parting breath—let the prisoner at the bar have the benefit of the mild and merciful laws of his country, but suffer not the justice of that country to be outraged with impunity if you are convinced of his guilt.

The jury retired for a quarter of an hour, and returned with a verdict—*Guilty*.

Mr. Attorney General.—My lord, I am now humbly to move your lordship to pronounce sentence upon the prisoner.

The prisoner was accordingly ordered to the bar—the indictment was read to him, and he was asked what he had to say, why judgment of death and execution should not be awarded against him.

Lord Norbury.—Edward Kearney! However painful the progress of this trial has been, it is now more painful to pronounce upon you the sentence of the law.—You have had as patient a trial as any man could have, and you cannot complain, that you were tried in a part of the country distant from the scene of your transgression, where the attendance of your witnesses might be difficult or inconvenient. Every man called by you has appeared for you.—The jury have listened to your cause with all possible patience and temper. I do not wish to disturb your mind, or oppress your feelings by a repetition of your guilt.—I wish to satisfy you, that justice has been done you, that you may compose your mind and prepare yourself for the punishment of your crime, in having endeavoured to subvert that law, which has given you so patient a trial—a trial so recent that it is unnecessary to go through any detail, to remind either you, or those who surround you, of the evidence that was conclusive of your guilt. Though that evidence was confined to a small number of facts, the patient investigation of your case has occupied an entire day. The transactions of that night, when a most wicked and unprovoked rebellion broke out with such horrid acts of atrocity, have brought indelible disgrace upon this unfortunate country. Upon that night you and your associates hurried many an honourable man, without warning to an untimely grave—you hurried on the savage pikeman to the charge, against the mild dispenser of benevolent justice: he was the advocate of the oppressed,

and listened with patient kindness to the defence of the accused;—but the first effort of your provisional government was in the barbarous phrenzy of your republican tyranny, to put that great and good man to cruel and instant death, without one moment of preparation—how shall you hope for mercy rendering none?

Prisoner.—My lord, I knew nothing of it.

Lord Norbury.—You have been patiently heard; and that so soon after the transaction alluded to, that you yourself must be astonished at the calm impartiality with which the investigation of your case has been attended. I mean not to insult you with your misfortunes and your crimes; I had rather assist your mind with pious exhortations to make your peace with God. For although your associates have shut the gates of mercy against the innocent, the mercy of God is infinite to the sinner who repents.

Prisoner.—I thank the Court and the jury; but I am condemned innocently. I was taken at Echlin's-lane, without a pike or other weapon.

Lord Norbury.—I have, with the tenderest concern for your situation, allowed you to interrupt the progress of a most solemn and painful duty. Let me entreat you to be composed. There is not a shadow of doubt upon your case; taken as you were while the battle was raging, with your weapon in your hand. What does your own witness say?—you went from Watling-street, not through James's-street, which was your way home, but into Thomas-street.

Prisoner.—I deny it, my lord, I was taken in James's-street.

Lord Norbury.—Lieutenant Brady, who is as humane as he is brave has proved the reverse. You have one consolation left, which is, that by the timely example of the criminal, the law will be preserved for the benefit of your children and your friends whom you leave behind you. The punishment allotted to your crime is to preserve the tranquillity of the country, that honest men may live with security, and sleep quiet in their beds, and that property and peace may be preserved. I intreat of you again to be composed, and to look up to heaven with pious resignation and humble prayer, to be forgiven there, as I am now to proceed to pronounce the sentence of the law.

His lordship pronounced the sentence in the usual form.

The prisoner was executed the next day in Thomas-street, pursuant to his sentence.

655. Proceedings on the Trial of THOMAS MAXWELL ROCHE for High Treason; tried before the Court holden under a Special Commission at Dublin, on Thursday Sept. 1: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.†

Thursday, September 1st, 1803.

Thomas Maxwell Roche was arraigned upon the following indictment :

County of the city of Dublin, to wit. THE jurors of our lord present that Thomas Maxwell Roche of the city and county of the city of Dublin yeoman a subject of our said lord the now king not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our said lord the now king his supreme true lawful and undoubted lord the cordial love and due obedience which every true and dutiful subject of our sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and intending the peace and common tranquillity of this realm to disquiet molest and disturb and the government and constitution of this realm to change subvert and alter and our said lord the king from his royal state title honour power imperial crown and government of this kingdom to depose and deprive and our said lord the present king to death and final destruction to bring and put he the said Thomas Maxwell Roche on the twenty-third day of July in the forty-third year of the reign of our said lord the king at Thomas-street aforesaid, in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death. And that to fulfil perfect and bring to effect his most evil and wicked treason and reasonable imaginations and compassings aforesaid he the said Thomas Maxwell Roche as such false traitor as aforesaid on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did con-

spire confederate and agree to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this kingdom And afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Thomas Maxwell Roche as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid did arm himself with and did bear and carry a certain weapon called a pike with intent to associate himself with divers other false traitors armed with guns swords and pikes whose names are to the said jurors unknown for the purpose of raising levying and making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king within this kingdom And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street in the city and county of the city of Dublin aforesaid the said Thomas Maxwell Roche as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said Thomas Maxwell Roche against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided. And the said jurors of our said lord the king upon their oath do further present that the said Thomas Maxwell Roche being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said

* From the report of W. Ridgeway, esq. arraigned at law.

† For the preliminary proceedings see the preceding case.

sovereign lord the king and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Thomas-street in the city and county of the city of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom And in order to fulfil and bring to effect the said traitorous compassings imaginations and intentions last mentioned of him the said Thomas Maxwell Roche he the said Thomas Maxwell Roche afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of him the said Thomas Maxwell Roche against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

The prisoner pleaded *Not Guilty*, and saying he was ready for his trial, the following jury was sworn, after six peremptory challenges by the prisoner, and five set by on the part of the crown.

Cornelius Gautier,	Robert Hunter,
Fredrick Geale,	Richard Jackson,
Francis Beggs,	Charles Bingham,
Robert Burnet,	Joshua Lacy,
Thomas Read,	George Palmer, jun.
James Atkinson,	Fennell Collins.

The prisoner was given in charge.

Counsel for the Crown.

Mr. Attorney General.—Standish O'Grady [afterwards Lord Chief Baron of the Exchequer;]

Mr. Solicitor General.—James Maclelland [afterwards a Baron of the Exchequer.]

Mr. Plunkett.

Mr. Mayne [afterwards a Judge of the Common Pleas]

Mr. Townsend;

Mr. Ridgeway;

Mr. O'Grady.

Agents.—Messrs. T. & W. Kennis, Crown Solicitors.

Counsel for the Prisoner.

Mr. Mac Nally.

Mr. O'Grady opened the indictment.

Mr. Attorney General:—My Lord, and Gentlemen of the Jury:—You, gentlemen, are impanelled to try the prisoner at the bar upon a charge of high treason. He is indicted upon two branches of the statute 25 Edw. 3rd, for compassing and imagining the death of the king, and for levying war against him. And to each count in this indictment there are certain overt acts laid, for the purpose of pointing out to you the means used by the prisoner for carrying the traitorous intentions of his heart into full execution.

Gentlemen, in investigating this charge, you will have to consider, first, whether, a traitorous insurrection and rebellion did exist in the city of Dublin on the 23rd of July last; and next, supposing that there did, whether the prisoner at the bar, participated in the design, or aided in the execution of it.

With regard to the first part, it may appear to you almost unnecessary to enter into an investigation of it; because in truth the lamentable notoriety of the fact is impressed upon the mind of every man in the country, and no one is ignorant, that there was upon that day a rebellious insurrection, which disgraced the capital. It has also been taken notice of by the legislature, and recited in two acts of parliament which have been passed upon the grounds of its existence.

But notwithstanding this notoriety, it was thought right, for the satisfaction of the public mind, to go into a detail of that transaction which admitted of legal and satisfactory proof, and its existence and dangerous tendency now stand farther confirmed by the verdict of a jury.*

But although, gentlemen, in consequence of these circumstances, we do not consider it right to consume the public time, or unnecessarily to trespass upon your feelings by going again into a minute detail of the atrocities which were committed, or the means by which the rebellion was instigated, yet we shall by a short examination of one or two witnesses, lay sufficient evidence before you, to enable you in point of law to draw the same inference as the jury of yesterday did, namely that the late disturbances in this city were of a treasonable and traitorous nature.

Having established this point, the next, and the most serious and important one for your consideration will be, What part the prisoner took in that much-to-be-lamented transaction?—He will be guilty of the crime of high treason, if any thing shall appear to you to have been done by him, showing that he agreed that such an insurrection should take place. You will also find him guilty, whether it appears that he previously knew of it, or

* See the preceding case.

not, if by his presence he wilfully aided and encouraged those who were concerned and engaged in it.

For that purpose, we will produce lieutenant Brady, who in marching his men into Thomas-street saw a man standing by himself, with a pike in his hand, apparently as a centinel, and holding his pike in such a manner as showed a determination to make use of it. He was taken into custody, and he immediately exclaimed and vociferated in such a manner, as to apprise his friends near him, that he was taken. The moment he made the noise (which shows the concert of the party, and the object with which he shouted) a bottle was thrown from the left, and a shot was fired from the right, which grievously wounded one of the 21st regiment, who is since dead. The prisoner thus showed by his conduct, that he stood as an advanced post; and he endeavoured to account for the pike with which he was armed, by saying, that he found it in the street.

Gentlemen, I state this to you, because an attempt was made in the course of the evidence yesterday, to show, that a person might be forced into the measure. But here there can be no such defence. The prisoner was by himself, and could have abandoned the weapon; but instead of doing so, when he was taken by the officer, he struggled and alarmed his friends.

I cannot anticipate what defence he may make; but it having been intimated yesterday, that the prisoner then upon his trial was intoxicated at the time he was taken—and some questions having been asked by the jury, which seemed to give countenance to this species of defence, I think it my duty to call your attention particularly to it, and to state explicitly that is a ground of vindication not permitted by the law, and which should equally call for the reprehension of the Court and the jury. So far from constituting a defence, it is an aggravation of the crime. It has been always so considered by courts of justice, and I am sure your own observation and experience will justify the wisdom of the law.

Those who are about to perpetrate desperate actions are not always free from the sensations of fear; the remorse of a guilty conscience will shake the firmest mind, and therefore they frequently assemble in public-houses before the moment of attack, stimulating each other with licentious conversation, and borrowing from liquor and debauch that intrepidity and fortitude which should properly belong only to those who are engaged in honourable pursuits. But, gentlemen, if this were to be considered as a protection which is used as a provocation, and if crimes were to be excused by those very circumstances which excite them, we should be left to the mercy of a dissolute rabble, whose characteristic is drunkenness, and who have already carried their favourite vice to such excess, as to give

serious alarm to every man who entertains a just regard for the morals and industry of the people. Intoxication has unfortunately become too familiar to them; it is in this country the origin of every evil and the primary cause of every disturbance and discontent; it keeps the people poor, and it will for ever make them unhappy: and therefore, gentlemen, if such a defence should be set up this day, I trust it will receive no encouragement from you, and that you will have the opinion of the court concurring with your understanding, that it constitutes no defence.

With regard to force, which I have already touched upon, it certainly admits of a different consideration, and is a good defence in point of law, when clearly and satisfactorily made out. But the mere assertion of the prisoner will not avail; the fact must be proved beyond the possibility of contradiction.

Gentlemen, I shall not transgress farther by consuming the public time. You will dispassionately discharge the duty reposed in you. You will look to your country, and you will look to the prisoner, and you will do equal justice between them both. You will discharge from your minds any impression which the lamentable occurrences of the 23rd of July may have made; you will look to nothing but the evidence, which you shall hear, and I shall be happy if, upon the whole, you can with justice pronounce a verdict of acquittal. But if upon the other hand the evidence shall satisfy you of the prisoner's guilt, it will be your duty to convict him. You will not, I am persuaded, be induced to swerve from your judgment one way or the other; and I have no doubt the result will be such as to give general satisfaction.

Edward Wilson, esq. sworn.

Upon his direct examination the witness gave the same account as upon the former trial. [Vide page 677.]

Edward Wilson, esq. cross-examined by Mr. Mac Nally.

You are a peace-officer?—I am chief peace-officer of the workhouse division.

The eleven you had with you were not a military party?—Those who were constables had commissions from the lord lieutenant to act as peace-officers.

But they do not belong to any regiment?—No, sir; but they have commissions from the lord lieutenant.

You and your men are not called "The king's forces?"—I think we are the king's forces.

You would not consider yourself liable to be sent to a barrack, or to any distant part of the country?—I consider we are bound to obey the directions of the lord lieutenant.

You are bound by act of parliament to keep the peace of the city. Have you your commission about you?—No, sir.

Did you see the prisoner among the party you mentioned?—I did not see him.

You cannot say he was there?—No, sir.

Mr. *Mac Nally*.—Then all you can say of the prisoner is, that you know nothing about him. I shall ask you no farther question.

Wheeler Coulman, esq. sworn and examined.

This witness gave the same account as before of the events of the night of the 23rd, and his discovery of the dépôt. [Vide page 719.] He enumerated the various articles which were found, and stated, that he computed the ball-cartridge at the time at 30,000; but that it appeared since by the return made to government, that they amounted to 36,000. He also stated, that there were some sky-rockets, without sticks, which he forgot to mention upon the former day; twelve baskets of bread were found with about 20 loaves each. In one part of the building there were some blankets and palliasses, as if some persons had slept there; also boards nine feet long, with nails drove through them in a diamond form, and about four inches projected beyond the board, which upon being thrown into the streets, would lame either cavalry or infantry. There was also a quantity of combustible matter, pitch, gunpowder, and other articles spread upon tow, like a plaister; which being set on fire and thrown against wooden work, would set it on fire.

Wheeler Coulman esq. cross-examined.

You did not find any man there?—No, I did not.

Sergeant *Thomas Rice* sworn and examined.

This witness proved the proclamation as before [Vide page 723.]

Pelix Brady esq. sworn—Examined by Mr. *Townsend*.

You are an officer in his majesty's army?—Yes.

In what regiment?—The 21st fusiliers.

Of what rank?—Second lieutenant and Adjutant.

Look at the prisoner at the bar?—I see him.

Tell the Court and the jury whether you recollect to have seen him before?—I recollect to have taken him a prisoner in Thomas-street, on the night of the 23rd of July last.

At what hour did you get into Thomas-street that night?—To the best of my recollection, it was half past nine; I cannot be exact.

From what place had you come?—From Cork-street barrack.

Was it in consequence of any information?—It was in consequence of information given by a peace-officer, who said he came from Mr. Wilson.

Mr. *Mac Nally*.—My lord, I object to this evidence: it is mere hearsay.

Mr. *Attorney General*.—My lord, it is not of much moment upon this trial; but it may as well be determined now. We contend, that this is evidence, to show the time and manner when the witness first heard of the insurrection, and to show, that it was a general pre-concerted and extensive business.

Mr. *Mac Nally*.—My lord, I object to the evidence; because the facts, if material, should be proved, not by the gentleman upon the table, who received them at second hand, but by the man who told them to him. This practice of stating facts as matter of inducement has been carried too far; and I beg leave to state to your lordships the rules which have been laid down by the present chancellor of England, in Hardy's case: inducement goes no farther in this particular instance than to show, that in consequence of something told the witness, he went to a certain place; but as to the facts communicated to him, the party who communicated them should be produced.

Mr. *Attorney General*.—My lord, I do not wish to press any evidence that might have the appearance of being illegal. But when we want to show a general insurrection, we wish to state the facts which happened. We do not desire the witness to state to the Court or the jury the particular expression used, or the facts told to him; but the general nature of the business.

Lord *Norbury*.—There can be no doubt, that such evidence has been always admitted.

Mr. *Justice Finlaison*.—This, which is now offered, is not evidence of inducement; but evidence of the fact itself.

Mr. *Townsend*.—What was the general nature of the information you received?—The cause of my going with the company was, in consequence of information given by the peace-officer, stating, that an armed mob was in the city.

For what particular purpose did you go?—To inform my commanding officer, the late Lieut. col. Brown, of it, and to escort him to the barrack if he thought fit, or to receive his orders.

Where did he live?—On Usher's Island.

In the course of your way, you went to Thomas-street?—Yes.

Was that your course?—Yes, sir.

Which way did you enter Thomas-street?—From the lower end of James's-street.

Is the entrance to Thomas-street thereabouts wide or narrow?—It is narrow there.

In what manner did you proceed; cautiously or otherwise?—Very cautiously. I had ordered the men to be very silent, and we marched with fixed bayonets and supported arms.

What was the first object you saw?—When I entered Thomas-street, the first object I saw, was the prisoner at the bar, standing with his face towards James's-street, holding

a pike in a diagonal position, the butt towards the ground, and the point upwards; he held it in both his hands.

How near were you to him at that time?—Almost quite close; I was on the left of the leading division; I seized him, and asked him what he was doing with the pole (for I thought it such at the time), but some of the soldiers who had been here in the last rebellion told me it was a pike: they assisted me in getting it from him; he made great resistance. When I got the pike I felt the top of it, where there was a square piece of iron, very sharp, and secured with a ring. The prisoner made a great noise, which was somewhat increased by the soldiers laying hold of him. I ordered them to be silent. I asked the prisoner, as mentioned, what he was going to do with the pole: he made no answer. From the left hand, from a window, for I heard the sash moving, a bottle was thrown among my men, without doing any mischief. A shot was fired from the right, and wounded one of my men.

In what state is he?—He is dead. The men at this time were not primed and loaded. I desired them to form sub-divisions, and prime and load. After the shot was fired, I heard the rebels huzzing in front of me, and I heard the trampling of their feet coming forward, as if in a very great body.

Can you form a judgment what distance they were from you when you seized the prisoner?—I cannot exactly say.

How far were they from you when they huzzed?—Not many yards; about twenty, or thereabouts, as I should think, from the time they took to advance, and from the place where I saw dead bodies afterwards.

Upon their advancing, what happened?—The leading sub-division fired right down the street upon them. After the volley, I heard them run, and my men commenced an independent fire. Some of them coming close, my men fired right and left, when the rebels all fled.

An independent fire is where every man fires as he can?—Every file fires as fast as they can load.

Proceed and mention what happened?—When they fled, we advanced a little farther, and found many pikes in the street. There were two men taken prisoners immediately after the fire: it did not last many minutes. After proceeding a little way, I counted six dead, and one dying. I did not go farther then. My wounded man was crying to be let home: it was dangerous to let him go by himself, and I was unwilling to diminish my force, by detaching a party with him. I turned to the right-about, and left the prisoners and the wounded man in James's-street barrack. An order came from general Fox for me and the prisoners to go to him. This man at the bar was the first brought before the general; the prisoner fell upon his knees, said he meant no harm, that he had a large

family, and said he found the pike in the street.

Jury.—Was the resistance he made, by words?—I cannot well explain it. He made resistance by struggling and by voice.

Court.—How soon after the noise was made, was the shot fired?—Almost immediately: he first shouted, and then the shot was fired.

Was the party at such a distance, that they could hear the prisoner?—I cannot say; but his noise could be heard from where the bottle was thrown and the shot fired.

Was it in taking the pike from him that he made the noise?—It was in forcing him between the sections that he made the noise.

Felix Brady, esq. cross-examined by Mr. Mac Nally.

When you saw the man first, he was in the middle of the street with the pike, in the position you have described?—Yes.

Was he advanced from the party you fired on?—He was advanced in the front of them.

How far, do you suppose?—I should suppose, about twenty yards.

Were you advanced before the soldiers?—No; I was on a line with the first division.

You were the first who saw him?—Yes; as being on the left of the division.

He then held the pike in a sloping position. He could do no injury unless he changed his position?—No, he could not; that is a fact.

He made no attempt to change the position of it?—He made no attempt upon me.

You laid hold of him?—I did.

It was in the dark; supposing he were an innocent man, he might have imagined you were of the rebel party?—When I could see the pike with him, he might have seen my regimentals and my sword drawn.

There was some firing?—There was.

Have you not heard that pikes were thrown out from stores or depôts into the street?—I did not hear it that night, but I did hear it since.

He was standing alone?—He was at the time I came up.

Then he was in fact between two parties?—He was; but I came close upon him.

He did not make any use of the pike, when you came up?—No, he did not.

Jury.—Did he make any struggle before he gave up the pike?—He did.

Mr. Mac Nally.—He was seized suddenly?—He was; upon being seized, he held the pike firmly until it was forced out of his hands.

Jury.—Could he have run away and made his escape before your party came up?—He might have thrown away his pike, and we would not disturb him, if he appeared without a pike, for I did not rightly know the business that time, but we came close upon him.

[Here the counsel for the crown offered the proclamation to be read.]

Mr. *Mac Nally*.—My lords, there is nothing more certain than this, that any paper found in the possession of a man charged with high treason, whether printed or written—contracting the rule to shorten the argument—may be evidence against him, if proved ever to have been in his possession, or to have been his act—as in the case of Stone,* letters from Jackson, proved to have been his hand-writing were read, because they were found in the possession of Jackson, against whom there had been previous proof that he was implicated with Stone.

Mr. *Baron George*.—That is not precisely the case. They came out of the possession of the secretary of state; but they were proved to be Jackson's hand writing.

Mr. *Mac Nally*.—But there was a connection established between Jackson and Stone. And it has been determined by Mr. J. Chamberlain and Mr. Baron George, that a general conspiracy being once proved, papers written for the purpose of showing the object of the conspiracy, or society, may be read against any member of it. But in all the cases, before the act of any person of the society could be given in evidence, it must appear that the party charged was a member of the society. In Hardy's case, it was ruled, that the acts of the society might be given in evidence against him, because he was a member of that society and even of other societies in Sheffield and Edinburgh, which were connected by their correspondence, the purpose of which was to overturn the government—they were all connected together, and the purpose was applicable to every member as if one body. Now here is proof given of an existing rebellion to overturn the government—that is, if your lordships are of opinion, that the evidence given amounts to such proof. If your lordships over-rule me in that, I will not insist, that there is no such proof—but confine myself to this:—Here is a paper offered in evidence, found in an uninhabited house, called a depôt, without proof, that the contents of the paper were known to the prisoner, or that he assented to it—that he ever saw it, or had any connection with it—or who printed it—and it is offered as evidence to show he conspired—How conspired?—Lord Mansfield in his elegant manner describes conspiracy to be a breathing together; because all treason depends not so much upon the act done, as the consent to the act. In conspiring the death of the king, it is the consenting, that makes the treason. I submit that there is no proof to show that this paper ought to be read against the prisoner. There is nothing to show he stands connected with the person who collected the papers. I put it in this way. Suppose the paper named the prisoner as a rebel, would it be evidence? Every

printer, who had the command of a press, and every rebel might introduce men of respectability, with a view of contaminating their characters, and I have known instances, where the best men in the country have been stigmatized by being joined in publications with rebels. Upon the grounds of sound policy, justice and law, and humanity, you are bound to protect men from being introduced. Look to the case of Henry Delamott; no papers were read except such as were found in his possession, and one came from the secretary of state, and it was found to be a copy, but made by Delamott's directions. In Sidney's case, papers found in his possession were read; but because they were not published by him, the legislature reversed the attainer against him, condemning the decision. My lord, all the cases rush into my mind; but I forbear to state more of them, and I shall submit to such decision as the Court shall make, contending however, that this paper ought not to be read.

Lord *Norbury*.—If your position were well founded, we have during a great part of the trial been admitting evidence, that should not have been suffered to go to the jury. The paper imports to be "An address from the Provisional Government." I go no farther at present. It is found amongst many thousands of the same kind just issued from the press in a great store, together with a great number of pikes, ammunition, of military weapons, calculated for destruction, and a general havock. From that depôt, as it has been already proved, the great body of the rebels were supplied on that evening. The account of all these implements has been given in evidence without objection as composing part of a general depôt collected for the purpose and in aid of the general design laid in the indictment, and they were of that kind and of such extent as to carry their own interpretation of their object with them; and how can any part of that evidence have been admissible, and this other material which is now the subject of discussion, not be admissible? I do not comprehend the distinction, which would show the admission of one and the exclusion of the other. There are always two questions in cases of this kind. The first is, whether a general design and conspiracy did exist—and the second is, how far particular facts may or can operate against the prisoner, by showing whether he acted for the general purpose. The evidence is, that he was advanced before a party who were armed, and he was found armed with one of those instruments of the same description as those which were found in the store, from whence the great body (of whom there is evidence that the prisoner made a part) issued forth armed, within a quarter of an hour previous to the period in question.

The paper which is the subject of discussion, is a paper of incitement in direct furtherance of the general conspiracy, and calculated to

* See Stone's case, *antè*, Vol. 25, pp. 1268, 1311.

† See Vol. 24, pp. 429, 436, 447, 698.

give effect to every weapon in the store, and no part of the general conspiracy will be evidence against the prisoner, unless evidence shall be given to involve him. None of the cases cited with regard to papers found upon the person, as argued upon by the prisoner's counsel are applicable to the present case; they bear no analogy to it, but stand upon a distinct ground of reasoning to establish a privity with the person to be affected. But this is established with regard to papers, that having proved a conspiracy to have existed, and the prisoner to be connected with that general conspiracy, the papers and proceedings of the same society in distinct places in furtherance of and relating to the general design, have been uniformly accepted as evidence explanatory of the general design against a party indicted for that treason. So it was yesterday ruled, when there was a close attention to duty by the counsel who attended for the person then upon trial. If this objection were well founded, it should have been made long ago; for the counsel should upon the same principle have objected to the examination of lieutenant Coultman, respecting the depôt, and all the other preliminary matter; but as explanatory of and as giving speech and utterance to those dumb implements of death, this paper is admissible evidence of the general design.

Mr. Justice *Finucane*.—In my apprehension, the answer to the objection is, that it does not fall within any of the cases which have been cited. What is the charge here? That an open rebellion and war existed in the city of Dublin, and that the prisoner took part in it. Is it not necessary to establish, first, that the rebellion and war did exist? Every evidence which goes to establish that is evidence admissible—not against a particular person, but to show a general rebellion and war. When that is established, the next fact is, whether the prisoner did concur in it, knowingly and willingly.—But he is in no manner affected by the evidence, unless he took a part in that insurrection. Therefore in my apprehension, when you consider the cases, those which have been cited do not apply. In the case of *Purchase*,* all the transactions of the evening were given in evidence, although he did not appear till very late and for aught appeared, knew nothing of the matter, until he joined.

[Extracts from the proclamation were then read. Vide p. 723.]

DEFENCE.

Mr. *Mac Nally*.—My Lords, and Gentlemen of the jury; This is one of those causes, in which the counsel assigned for the prisoner, to aid him in his defence, must feel extreme anxiety indeed; because no man can divest himself of those impressions of horror and of

grief made upon the mind, and sunk into the heart of every honest and loyal subject, by the commission of those atrocities, and those murders perpetrated by a wicked and nefarious banditti of savage miscreants, on the evening of the 23rd of July last. That those atrocities must have been committed by emissaries acting under the direction of France, abundant proof exists. I say there is abundant proof before you, that to the machinations of French politics, the recent insurrection in Dublin and its vicinity, is to be imputed—yes, to France—France, the ancient and the avowed, the envious and the rancorous enemy of the people of England (and at this day when I mention the people of England, I would be understood to include the people of Ireland) from the time she acquired strength, to this day, through the whole series of her history—in every situation—under every monarch, at every era, France has been the avowed or the insidious enemy of England and of Ireland. She has been the enemy of this realm under her kings; is it then surprising she should continue her enmity with additional rancour when all regular government has been overthrown; when her monarchy is laid in the dust—and when she is ruled by an usurper, who wields not a sceptre but a mace, to bear down and oppress all who are subjugated under its iron rule? Is it surprising that the machinations which destroyed civil society in that country, and in every other country where her power has introduced them, should be brought over and exerted here to destroy that constitution which France has always abhorred, and which for ages has been the guardian of regal authority, and the rights and the properties of the British people?

As a subject of that constitution—as an enemy to the anarchy that disgraces France, I accede to every thing which has been advanced by Mr. Attorney-general, on the present state of the French nation; and the necessity of an union of heart and of hand in this country, to oppose that novel and non-descript tyranny attempted to be set up in this country by a deluded mob, whose folly is as conspicuous as their cruelty has been abominable. God preserve us from the dominion of a mob, where, as my learned friend Mr. Curran, once said (and in his absence I will attempt to express his sentiment) “anarchy reigns, and every bludgeon becomes a sceptre in the hand of a tyrant!”—where authority has been superseded, where power is unrestrained, and where no man is safe in his life or in his property from the inflictions of uncontrolled military force and arbitrary oppressions, falling upon himself and upon his children.

Gentlemen, I make this declaration from my heart, and I add, that my arm, weak as it is, my person, mutilated as it has been, are ready to oppose the base and ambitious foe that threatens to overturn the government of my country, and to enslave my fellow-sub-

* Vol. 15, p. 651.

jects; and whenever my duty to my king and to my country shall call me forward, were that duty to place me on a forlorn hope, I trust I shall not be found the first man who will turn my back upon the invading enemy.

Gentlemen, I accede to the law respecting high treason, as it has been laid down upon this occasion by the king's attorney-general; that learned gentleman has stated the law in a manner clear and perspicuous to your understandings, and the rules he has adopted, resulting as they do from the highest legal authorities, of course must meet my full approbation as a professional man. But, gentlemen, there was a part of the learned attorney's address to you, which made, indeed, a very deep impression on my mind, which could not escape your observation and feelings, and which, I trust, will have the benign effect intended, when you retire to contemplate on my client's case. Many of you were in this court yesterday, and I now allude to the humane doctrines addressed to the jury of yesterday by the king's first law officer; he then said, and I trust you will now attend to his doctrine, as I repeat it, he then cautioned the jury he addressed, that all they had heard upon the subject of rebellion, previous to their coming into court, ought to be wiped away from their minds. And so it ought, gentlemen; a juror should come into his box with a clear and unpolluted understanding, with a mind fair and unspotted as the ermine that borders the judge's robe, the emblem of immaculate truth and of candour. I say you must, preparatory to the consideration of the prisoner's case, divest your minds of all prejudice, for he is entitled to your presumption of his innocence, previous to the detail of evidence. Therefore, gentlemen, you should reject from your consideration two observations which have fallen from the attorney-general, in his statement. He has stated that an act of parliament has declared the existence of a rebellion in this country. Gentlemen, that is no subject for your contemplation, that act of parliament has not been, nor could it be given in evidence against the prisoner, and therefore it is my duty to tell you, that as jurors you are bound to pay no regard to that act of parliament.

Mr. Baron George.—Mr. Mac Nally, no act of parliament was given or offered in evidence.

Mr. Attorney General.—And, my lord, the learned gentleman will please to recollect, that I said, I would not resort to such evidence.

Mr. Mac Nally.—I have not asserted that the act of parliament was given or offered in evidence, but it was certainly alluded to in Mr. Attorney's statement of the case on the part of the crown, and therefore I thought it necessary to take notice of it, as every thing that falls from that gentleman must have weight.

Gentlemen, I have said you should not

notice the act of parliament alluded to—and I also say, neither should you notice by taking into contemplation the verdict of yesterday, delivered by another jury, and also alluded to by the attorney-general; there is no connection between the cases. In criminal cases, a verdict on one trial is not evidence on another: I do not say the verdict was offered in evidence, but I do say it was stated, and every thing stated must be impressive; but you are to come here without regard to any matter or fact but what you may hear this day, from the witnesses produced in open court, and sworn upon their oaths to tell the truth. You, as judges of fact, are to restrain your attention to the solemn oath you have yourselves taken "well and truly to try the issue according to the evidence." What issue are you to try? You are to try, whether the prisoner, from the testimony given, has done any open deed to convince you that he intended, and conspired with others in furtherance of that intention, to overturn the government, and bring the king to death.

Gentlemen, I agree to the law as laid down by the counsel for the crown, that every means taken to overturn the government by force, constructively brings the person of the king into danger, and is an overt act of treason, as compassing and imagining his majesty's death. But let us look to the evidence as it applies to the prisoner.

Gentlemen, the evidence to support that which is the most serious of all accusations, that is, as the indictment charges it, conspiring contriving and intending to subvert and change the government, and to depose the king and bring him to death, depends upon the testimony of gentlemen against whose credit no impeachment lies, no objection has been made. But recollect their evidence—recollect that neither Mr. Wilson, the chief peace officer, nor lieutenant Coulman, nor any other of the witnesses examined, to prove the actual existence of rebellion on the 23d of July last, though all present in the scene of action, have expressed one single word against the prisoner. A printed paper has been produced as evidence of the intent of the conspirators; my objection to the reading of that paper as evidence against him was over-ruled by the Court—and legally over-ruled no doubt—you have heard the contents of that paper, but you have heard nothing in that paper or proclamation that goes to show that the prisoner ever assented to, or was ever acquainted with its contents:—and gentlemen, you will also recollect this circumstance, that though this proclamation was found, yet it was never published, and therefore so far as I am going to state, the prisoner must appear innocent of the intent held out by that proclamation, that of erecting a republic in Ireland, because there is no evidence to inform the jury that he was concerned in the composing, or in the printing of it—and of course could not have been in-

fluenced to act by any thing that is therein contained—for I say, it is clear he had no knowledge of its contents.

What is the evidence against this man, to prove the intent imputed to him by the indictment? It is that he held a pike diagonally—that he was arrested—that he struggled when a prisoner and that he was brought before general Fox. Then comes a material fact indeed not against but in favour of the prisoner—his conduct before the commander in chief.

Gentlemen, I will venture to assert that the court will tell you this—that where a man is put upon confession, the purport of that confession, as it is legal evidence against him, so it is legal evidence for him, if brought forward on the part of the prosecution. Now the declaration of this man before general Fox, who is a magistrate and a privy counsellor, has been given in evidence, and that confession is in his favour—therefore you will humanely lay his words near your hearts. The law officers of the crown might have suppressed this fact, but they, and the witness who swore to it have with a candour, which reflects the highest honour on their conduct, fairly brought it forward. I do say that by the candour of the counsel for the crown and a witness for the crown, the man at the bar stands acquitted. I do say that if a man is to be condemned out of his own mouth, so where his words or declarations are made evidence, he is to be acquitted out of his own mouth. What has been sworn? The witness swears that when brought before general Fox, the prisoner fell upon his knees, and upon his knees he declared “he found the pike.” He made that declaration to general Fox, who was not only the commanding officer, but a magistrate, surrounded at the time by armed men—in a moment when he dare speak nothing but truth, he solemnly declared “he found the pike.” This I say was a confession judicially taken, and as such is evidence that ought to have weight in favour of the prisoner.—If guilty, it is not such a declaration as he would have uttered; no, he would have supplicated mercy for his crimes, and have offered to give information as atonement and as the condition for his life. I venture to put the merits of his case upon this declaration, and if it carries credence to your breasts, gentlemen, it must create acquittal upon the treasons charged of compassing the king's death and levying war; for it is evidence that he had not the intent charged in the first count, and that he was not armed for the purpose charged in the second of the indictment.

The truth of this declaration, I also humbly submit to your judgment is corroborated in this way.—It appears, from the testimony of the witnesses for the Crown, that many pikes were thrown down in the streets and lanes in the vicinity of Thomas-street on that night; and this man without any settled motive, with

out any previous intent, might have taken up that pike, almost involuntary, in the very moment when he was arrested, and the position in which he held it, shows that to have been the fact. Mark, gentlemen, the pike lay before him and he took it up—but with what intent? There is no act of force proved—and had he designed to charge the king's forces, the position described is not the position in which he would have held it.

Gentlemen, negative proof is not undeserving your consideration: you will therefore recollect there is no evidence of the prisoner's having communication with other persons at the time he made the noise after being apprehended, and what the noise was, whether it originated in terror or in supplication, or whether it was a signal as has been insinuated, does not appear; the officer could not explain this otherwise, or impute it to any cause; you may recollect he said so, in answer to a question put by one of yourselves.

Let me also draw your attention to this material fact—it appears that the prisoner might have fled if he chose so to do. If he could fly, why should he stay? not for the battle, because he did not attempt to strike the officer, or the serjeant, or the private soldier. There is no evidence to show he acted in any hostile manner with the pike.—The evidence is, he found it—he took it up, he did not use it, and he surrendered himself a prisoner.

Gentlemen, I will not trouble you much with speaking upon that which the law humanely considers to be the duty of a jury, when there is a doubt upon the evidence; because if at this instant it were possible that your minds were made up to convict my client, I would create a doubt from the evidence I shall produce, extrinsic of the merits of his case—I will create a doubt from the excellence of my client's character. I know it has been often said, from both the bar and the bench, that where the scales of evidence are even, where the beam trembles in *equilibrium*, if a doubt exists it should preponderate in favour of the party accused,—this is a merciful rule of English law, which has never been questioned—but I will venture to extend the benign principle still further; I do venture to submit to you, as sound, and as legal, and just, and merciful doctrine, that in such a case as this, where the charge is so heinous and the punishment is so great, a case where nothing has been proved to support the treason imputed to the prisoner, but his temporary possession of a pike, the charge may be fairly and effectually resisted by character—that the evidence of an honest and unimpeached character is in itself sufficient to create a doubt, and that doubt being created, ought to be conclusive for an acquittal.

God forbid that the indigent should not experience on every occasion, the full benefit of a good character; it is the poor man's most valuable property, and too often the only pro-

Mr. Justice Finneane.—Thomas Maxwell Roche, you have been indicted for the highest of all crimes, compassing the death of the king, and raising and levying cruel war and rebellion in the city of Dublin. You have been tried for this offence, and upon the fullest and clearest evidence convicted; the evidence was such as to leave no doubt in the mind of any man who heard it. For my part, I lament most sincerely from my heart your unhappy fate, and that of those who have been deluded with you by your enemies into shameful combinations of this sort, against all social happiness, and for the overthrow of all government. I feel, deluded as they are, that they are my countrymen and friends—that in their misery or prosperity every thing which is dear and valuable to me is involved; I cannot, therefore, but feel for them, and am surprised, that after so many unsuccessful attempts, they still suffer themselves to be deluded, year after year, in the pursuit of impossible benefits, by artful and designing persons, who promise them the wealth of the rich and the lands of the country—phantoms and notions of this sort never can be realised. The people of this country, before the introduction of French principles among us, were reckoned a shrewd and sensible people; but

these phantoms raised in their minds, and introduced by French politics and principles, have totally turned the heads of the unfortunate people of the country. How much easier is it, if riches were their object, to grow rich by honest industry, and the fair means which are in their power? Many instances may be adduced of men who, to the knowledge of us all, have risen from humble rank to high station by honest industry, sobriety, and frugality;—these are sure and certain means of growing rich. Why other means, dangerous, hazardous, and uncertain, are put forward, is really astonishing to me. I beseech every man who hears me to take warning by the fate of the unhappy man at the bar; let them pursue the honest means of growing rich, if riches be their object, and they cannot fail: I give this advice in sincerity, and from the purest affection and regard. It remains now only for me to pronounce the sentence of the law, which I do with as much pain as you can receive it.

The learned judge then pronounced the sentence in the usual form.

And the prisoner was executed the next day, in Thomas-street, pursuant to his sentence.

656. Trial of OWEN KIRWAN for High Treason; before the Court holden under a Special Commission at Dublin, on Thursday September the 1st: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.*

Thursday, Sept. 1, 1803.

Owen Kirwan was put to the bar—he was arraigned the day before upon the following indictment:

County of the City of? THE jurors of our Dublin, to wit. } lord the king upon oath present that Owen Kirwan late of Plunket-street in the city and county of the city of Dublin taylor a subject of our said lord the now king not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the king should bear wholly withdrawing and

contriving and intending the peace and common tranquillity of this kingdom to be molested and disturb and the government and constitution of this realm to change subvert and alter and our said lord the king from the royal state title honour power imperial crown and government of this his kingdom to depose and deprive and our said lord the present king to death and final destruction to bring and put be the said Owen Kirwan on the twenty-third day of July in the forty-third year of the reign of our said lord the king at Plunket-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death

And that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations and compassings aforesaid he the said Owen Kirwan as such false traitor as aforesaid on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king at

* From the report of William Ridgeway, esq. barrister at law.

† The preliminary proceedings will be found at the beginning of Kearney's trial, p. 683.

Plunket-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did conspire confederate and agree to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this kingdom

And that afterwards to wit on the said third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Plunket-street aforesaid in the city and county of the city of Dublin aforesaid the said Owen Kirwan as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid did arm himself with and did bear and carry a certain weapon called a pike with intent to associate himself with divers other false traitors armed with guns swords and pikes whose names are to the said jurors unknown for the purpose of raising levying and making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Plunket-street aforesaid in the city and county of the city of Dublin aforesaid the said Owen Kirwan as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said Owen Kirwan against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

And the said jurors of our said lord the king upon their oath do further present that the said Owen Kirwan being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said lord the king and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Plunket-street aforesaid in the city and county of the city

of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom and in order to fulfil and bring to effect the said traitorous compassings imaginations and intentions last mentioned of him the said Owen Kirwan he the said Owen Kirwan afterwards to wit on the twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Plunket-street aforesaid in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of him the said Owen Kirwan against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

The Prisoner pleaded Not Guilty; and being asked was he ready for trial? he answered he was—he was then put to his challenges, and the following jury was sworn, after eight peremptory challenges by him, and three set by on the part of the crown:

William Edmiston,	Henry Feile,
William Mullock,	William Mac Aulay,
William Andrews,	Alex. Montgomery,
Richard Babington,	John Sale,
Henry Browne,	Andrew Lee,
William Murray,	Arch. Buchanan.

The prisoner was given in charge.

The Counsel and Agents for the Crown were the same as on the former trials.

Counsel for the Prisoner.

Mr. Curran.

Mr. Mac Nally.

Agent.—Mr. L. Mac Nally.

Mr. O'Grady opened the Indictment.

Mr. Attorney General.—My Lord, and Gentlemen of the Jury,—In this case, the prisoner at the bar is accused of high treason, and you are upon your oaths, to attend to the evidence which will be laid before you, and to decide upon that evidence, whether he is guilty of the charge or not.—The nature of the indictment and the overt acts to support it, will be fully explained to you by the court.—I shall call your attention to the nature of the evidence we shall lay before you, in order to show the part which the prisoner took in the rebellion. Your consideration; gentle-

men, will be confined entirely to two points:—first, whether there existed a rebellion in this city, upon the 23rd of July last—and secondly, whether the prisoner participated in that rebellion, either by concurring in the design, or wilfully aiding in the execution of it.—If you believe the facts which I am instructed to lay before you, the case will be as clear as the law arising upon them.

I am instructed to state to you, that upon the evening of the 23rd of July last, it was observed, that a number of people went into the prisoner's house in Plunket-street, and that in the course of the same evening he frequently left his house with a green bag in his hand, and directed his course to Thomas-street.—He has been employed as a vender of cast clothes; and for any thing I know, might have used the bag in that way.—After he had gone and returned several times, he was observed to stand at the door with another person as it were in consultation; and at 9 o'clock a rocket was observed to rise from Thomas-street which passed nearly over the prisoner's house. The prisoner immediately exclaimed, "Boys! there's a rocket!" He desired them to turn out, and they did turn out, all armed with pikes. He then put himself at the head of them with a pike upon his shoulder, and threatened vengeance to all those who should decline to assist.

At this time he wore a green-coloured coat, and his wife fearing he would be remarked in that dress, followed him and forced him to put on another. His appearing thus armed upon the signal of a rocket will be material when you consider that in the rebel dépôt which was discovered near Thomas-street, sky-rockets were found, which were calculated for signals in different parts of the town. The prisoner then called out, "The town is our own"—You, gentlemen, will consider what meaning is to be attributed to his conduct and to his expressions, and whether they do not clearly evince his guilt both as a conspirator and an actor. He immediately went in the direction towards Thomas-street, and in half an hour after, another party, headed by a man in a scarlet uniform, halted at the prisoner's house, were there furnished with refreshment, and then proceeded to Thomas-street.

These circumstances are so strong, that they do not involve the prisoner merely as having a pike in his hand, but they implicate him as a leader, taking an active part and heading some of the insurgents to the scene of action.

Gentlemen, if these facts shall be proved, it will only remain for you to pronounce your verdict upon them. But before I conclude, I am to entreat that you will discharge from your minds any feelings or prepossessions you may have received upon this subject, and that you will attend solely to the evidence which we shall submit to your consideration; it is of such a nature as strongly

leads me to think that we are not mistaken in the charge which we have brought against the prisoner, but if it shall appear that we are, I shall very sincerely participate in the happiness which you will feel in acquitting him of the accusation.

Edward Wilson, esq. was sworn and examined, and gave the same evidence as before. [Vide, Kearney's case. p. 711.]

Lieutenant *Wheeler Coultman* was sworn and examined and gave the same evidence as before. [Vide Kearney's case, p. 719.] Among the articles found, the sky-rockets were noticed as particularly applicable in the present case.

Thomas Rice proved the proclamation is upon the former trials.

Benjamin Adams sworn.—Examined by *Mr. Mayne*.

What is your employment in life?—A silk weaver.

Where do you live?—In Plunket-street.

Whereabouts?—At No. 13, near Francis-street.

Do you know the prisoner?—I do. [Witness identified him.]

How long have you known him?—Ten or twelve years.

Where does he live?—At No. 64, Plunket-street.

Is that near where you lived?—It is almost opposite.

Do you recollect the evening of the 23rd of July?—I do.

Do you recollect having taken notice of any thing particular at the house of the prisoner on that evening?—I do; in the evening of the 23rd of July, I saw the prisoner go up Plunket-street towards Thomas-street, with a green bag.

How often?—I cannot say, but it was several times.

Was the bag full or empty as he went out?—It was half full.

Was it so when he returned?—No, it was empty.

How long did he stay away each time?—About twenty or five and twenty minutes.

While he was thus going backward and forward, did you observe any thing particular at his house?—I saw a parcel of men going into his place.

Did they go all together?—No, they went in separately.

What more did you observe?—Between eight and nine o'clock he was leaning upon the post of the door, speaking to another man.

Was it day-light or dark when you observed that?—It was not dark; it was between the two lights; I could discern them distinctly.

Where were you?—Looking out from my window.

What window?—In the three pair room.
What did you observe?—They were discouraging, I cannot tell about what.

Did any thing particular happen?—There was a rocket, which came from towards Thomas-street clear over Plunket-street where I was.

What happened then?—Owen Kirwan was at this time standing at his door, and when he saw the rocket, he took off his hat and said, "There is the rocket my boys!" He then returned into his own shop. He had a green frock coat upon him, and his wife was standing there; she got hold of the sleeve of his coat, and pulled it off, and handed him a cotton jacket which he put on; and he took a pike in his hand and put it on his shoulder. When he got the pike upon his shoulder, he said "God's blood, boys, turn out, the town is our own to-night."

What is his employment?—He is a cast cloaths man.

Has he any other employment?—Not that I know of.

What more passed?—He said, "any man that does not turn out to night, shall surely be put to death to-morrow."

What happened after that?—He and the party ran up the street, and they turned the corner towards Thomas-street.

How many were of the party?—About eight or ten.

Where did they come from?—From the prisoner's house.

Were they armed?—They were.

What arms?—They had pikes.

Had the prisoner a pike when he went towards Thomas-street?—He had.

Did you see any thing particular afterwards?—In about half an hour, I saw a party of men with pikes come down the street.

Were they armed?—They were.

With what?—With pikes.

How many do you suppose that party consisted of?—I cannot say, for they ran very fast; I could not count them.

Did you see any thing farther?—Yes; in about a quarter of an hour after that, sixty or seventy men with pikes came down the street.

Was that a larger party than the former?—Much larger.

What opportunity had you of reckoning them?—I am sure, if I had reckoned them, they were above 100; but I speak rather below the number, and I am sure there were 70.

Did they stop in the street?—They did.

Where?—At Kirwan's house, and a little lower down.

Did they get any thing?—Yes; some beer.

Where was that?—At Kirwan's; his wife had got it in before they came.

Did you hear any firing that evening?—I did.

Was it at this time?—No, a little after.

Where?—In the direction of the Coombe.
Did you hear any other firing?—I did, a few shots, but not together.

Did you see the prisoner again that night?—No, sir.

Benjamin Adams cross-examined by Mr. Curran.

Where do you live, do you say?—In Plunket-street.

Near the prisoner?—Yes, sir, nearly opposite.

Had you been in habits of much intimacy with him?—No, only seeing him pass by.

You were not acquainted with him?—I have spoken to the man, and bid him the time of the day.

Might he have seen you at the time of the conversation?—He could.

Did he speak to you?—No, sir.

He did not speak?—Not to me.

Did he speak in a whisper?—He did not speak at first so as that I could hear him from the window where I was.

You saw him go out with a bag?—I did.

Do you think there is any great harm in carrying a bag with something in it which you do not see?—No, sir, many a man carries a bag without any harm.

Do you not believe he is a cast clothes man?—I believe he was.

Is it not frequent for men in that business to carry clothes which they sell to people in a bag?—I believe it is.

Do you not believe it is the common practice of tailors and persons of that kind, to carry home clothes in a bag to prevent their being dropped in the street or dirtied?—I believe so.

Had he a stall in which he sold clothes?—He had.

Do you not believe that the clothes which were sold in the market-house were taken from the house to be so sold?—Yes.

Then there were two occasions upon which the bag was used, one to take clothes to his customers, and another to take them to a place of sale. He said every man who did not turn out would be put to death the next day?—He did.

Did he say that to you?—No.

Did he ask you to go out?—No, he did not.

When did you disclose the fact, that you knew any thing about what you have given evidence of?—I never told any one, till I told it to my father.

How long after the 23rd of July was that?—The next day.

Then you told your father?—Yes.

To whom did you tell it next?—One Mr. Dalton, belonging to the Rotunda Division.

To whom next?—He desired me to go to the major.

To what major?—Major Sirr.

There was no kind of intimacy between you

and the prisoner; of course, you bore him no ill-will?—I never did.

Are you a married man?—I am

You had no difference with the prisoner? No.

Was there never any dispute between you and the prisoner, or between you and the prisoner's wife, on account of any circumstance respecting your own wife? recollect yourself?—Not between me and the prisoner, or his wife.

I will lead your memory to it; you and your wife do not live together?—We do not.

Was she received into the prisoner's house after she parted with you?—One night she was.

How long ago is that?—To the best of my opinion it is a year and a half ago.

Did she ever return to you again?—She did.

Does she live with you?—No, but we converse constantly together: we do not live together on account of her mother.

Did you ever express any dissatisfaction at her staying that night at the prisoner's?—I never did.

Court.—You said the prisoner spoke in a whisper, or so as not to be heard?—Yes, when he conversed with the man.

When he said, "Turn out, the town is our own," was that in a whisper?—No, it was loud.

Did he speak loud until the rocket went off?—He did not; but then he spoke loud.

Mr. Curran.—What kept you at the window all this time?—I was looking out the whole night. I had sprained my wrist and was not able to work, and was at home all that day; my father was at the door in the evening, and a woman, one of his tenants pulled him by the coat and desired him to go in, saying, "This is the night there is to be a massacre." He came in and shut the door, and I went to the window, and remained there all night.

Stewart Hume Douglas, esq. sworn.—Examined by *Mr. O'Grady.*

You are an officer in his majesty's service?—I am.

Were you on guard the 43rd of July last?—I was.

Did you command any party?—The light company of the 21st regiment.

Where were they?—At the Coombe Barrack.

Did any thing particular occur to you that night?—Nothing, until I was told by magistrate Drury, that there was an expectation of a rising that night.

In consequence of that, did you go out with him?—I did: the magistrate first took a sergeant and twelve men to patrol the streets; but a mob appeared coming from Meath-street towards the guard house, I ordered all the men out and to prime and load.

Court.—Was the mob armed?—I cannot say at that time; it was growing dark, and they did not advance upon me. I drew up my company, and marched them in two divisions towards the mob.

Mr. O'Grady.—Did you meet with any obstruction?—Not till I came to the top of Meath-street, near Thomas-street when I saw in Thomas-street between 150 and 200 men drawn up with pikes on their shoulders; I there halted my men and I asked the magistrate permission to fire, which he refused.

Did you do any thing to induce him to allow you to fire?—I repeatedly urged him, and my men frequently asked permission to fire.

What farther occurred?—The rebels wheeled back from their centre very regularly.

Court.—What do you mean by regularly? in a military manner?—Yes, my lord.

Mr. O'Grady.—Proceed and mention what passed?—They then came to the charge with their pikes.

What do you mean by the charge?—They brought their pikes down to the charge, in a horizontal position; after a great deal of retreat and another great mob collecting in my rear, the magistrate permitted me to advance, but desired me not to fire, as it was not in his district. When I got leave to advance, a good many threw down their pikes which created some confusion among the rest, and they retreated towards the market-house of Thomas-street; one man about 60 or 70 years old, made an attempt with a pike upon my men; my men threw up his pike with their arms, knocked him down and pulled him with his own pike. I then marched down as far as the market-house, when my men dispersed great numbers of people armed with pikes, and drove them from the market-house out through the pillars; my party collected between forty and fifty pikes which we brought away; upon getting out of the market-house, I asked *Mr. Drury* where he intended to take me; he said down to my own barrack, where he would allow me to fire if any attack was made. I then marched down Francis-street and when I arrived at the barrack, I drew up my men into two parties; one fronting Meath-street, and the other to Francis-street; and in about ten minutes after I was charged by the rebels from Francis-street; two or three men came forward and fired, by which two of my men were wounded, after which the party charged with a great shout; I ordered my men to fire, which seemed to check the rebels; whoever was their leader we heard him endeavouring to bring them on; but when they got the second volley they fled; and the part who had not turned the corner of Francis-street received the third volley.

Did you kill any of them?—I did not like to advance my men in the dark, for fear of being surrounded, as if I had gone up

Francis-street the rebels might come upon my rear from the Poddle and another small street near it; but as soon as day-light appeared I found four men lying dead within a few yards of my station and about 15 pikes; a gentleman afterwards told me he saw them carrying 14 or 15 dead bodies up through Francis-street.

Stewart Hume Douglas, esq. cross-examined by Mr. Mac Nally.

You did not see the prisoner there?—No, I did not.

Did the magistrate remain with you during the fight?—He did not.

I thought he promised to give you permission to fire as soon as you arrived at the barrack; where did he go upon the commencement of the fight?—He went into his house.

Oh! I suppose he gave you the word of command from the drawing-room window?—No, he did not wait to give any word.

Mr. Mac Nally.—I forgot he is an officer of peace!

Joseph Adams sworn.—Examined by Mr. Attorney General.

Are you acquainted with Benjamin Adams?—Yes, he is my son.

Were you in the city of Dublin upon the evening of the 23rd of July last?—I was in Plunket-street, at No. 11, in my own house.

When did you first hear of any disturbance that evening?—At a quarter past nine. I was nailing up some boards at a cellar, some person said the days were growing short, and I looked at my watch, I then saw some men with pikes, but at first thought they were watchmen; I said there was something the matter, and a woman took me by the sleeve and pulled me in, and then followed me and said, we will all be massacred that night.

Why did she not tell you that in the street?—She was afraid of the men: but she came up to me and took me a one side, and said, *that was my time*. I flew up stairs, looked out of the window, and saw a number of pikemen. I thought I should be killed when the man came and desired "all the boys to turn out to arms." My wife desired me to escape and leave her to the mercy of the world. I flew up to the top of the house through the dormant window, and then I saw five or six men upon the top of the house who I thought, would do me out, but they were persons who had ran up like myself, we staid in the valley of the roof till near one o'clock.

Were you a yeoman at that time?—I was for about a week before.

Did you see any thing farther?—When I heard the long roll of the army—

What do you mean by the *long roll*?—The fire from the Coombe, like a hedge firing, I said to the people we might go down, for that they had got such a supper they would not

come back. We then went down and staid together till near four, when I got to the parade.

Was your son Benjamin at home that night?—He was at home all that night.

Do you live opposite to Kirwan's?—I do.

Did you see him the next day?—No, nor for a week after. The Tuesday week after I saw him at his own door.

Had he been absent from home so long a time before?—Not that I recollect.

Joseph Adams cross-examined by Mr. Curran.

Were you intimate with the prisoner?—No; we sometimes spoke to each other, he has come across the way to me, and I have spoken to him.

He is a married man?—Yes.

Has children?—Yes, three.

One at nurse?—I can't say.

Did not you hear that he went to the country to see a child at nurse?—I did not.

He was taken at his own house?—He was.

Mr. Attorney General.—When was the prisoner arrested?—He was brought a prisoner to the hall where the Liberty Rangers were on guard, the Tuesday or Wednesday week after the rebellion.

Extracts from the proclamation were read, for which see Kearney's case, *ante*, p. 725, and the case was closed.

DEFENCE.

Mr. Curran.—My lords, and gentlemen of the jury:—It has now become my duty to state to your lordships, and to you, gentlemen, the defence of the prisoner at the bar. I was chosen for that very unpleasant task without my concurrence or knowledge, but as soon as I was apprized of it, I did accept it without hesitation: to assist an human being under the most awful of all situations, trembling on the dreadful alternative of honourable life, or ignominious death, was what no man, worthy of the name, could refuse to man; but it would be peculiarly base in a person who has the honour of wearing the king's gown to leave his subject undefended, until a sentence pronounced upon him had shown, that neither in fact nor in law could any defence avail him. I cannot however but confess I feel no small consolation when I compare my present with my former situation upon similar occasions. In those sad times to which I allude, it was frequently my fate to come forward to the spot where I now stand, with a body sinking under infirmity and disease, and a mind broken with the consciousness of public calamity, created and exasperated by public folly. It has pleased heaven that I should live to survive both these afflictions, and I am grateful for its mercy. I new come hither through a composed and quiet city—I read no expressions in any face, save such as mark the orderly feelings of social life, or the various characters of civil occupation—I see no frightful

spectacle of infuriated power or suffering humanity—I see no tortures—I hear no shrieks—I no longer see the human heart charred in the flame of its own vile and paltry passions, black and bloodless, capable only of catching and communicating that destructive fire by which it devours, and is itself devoured—I no longer behold the ravages of that odious bigotry, by which we were deformed, and degraded, and disgraced; a bigotry against which no honest man should miss an opportunity of putting his countrymen, of all sects, and of all descriptions upon their guard, it is the accursed and promiscuous progeny of servile hypocrisy, of remorseless lust of power—of insatiate thirst of gain—labouring for the destruction of man, under the specious pretences of religion—her banner stolen from the altar of God, and her allies congregated from the abysses of hell, she acts by votaries to be restrained by no compunctions of humanity—for they are dead to mercy; to be reclaimed by no voice of reason—for refutation is the bread on which their folly feeds; they are outlawed alike from their species and their Creator; the object of their crime is social life—and the wages of their sin is social death—for although it may happen that a guilty individual should escape from the law that he has broken, it cannot be so with nations—their guilt is too unwieldy for such escape—they may rest assured that Providence has, in the natural connexion between causes and their effects, established a system of retributive justice, by which the crimes of nations are sooner or later avenged by their own inevitable consequences. But that hateful bigotry—that baneful discord, which fired the heart of man, and steeled it against his brother, has fled at last, and I trust for ever. Even in this melancholy place I feel myself restored and re-created by breathing the mild atmosphere of justice, mercy, and humanity—I feel I am addressing the parental authority of the law—I feel I am addressing a jury of my countrymen, my fellow subjects, and my fellow christians—against whom my heart is waging no concealed hostility—from whom my face is disguising no latent sentiment of repugnance or disgust. I have not now to touch the high-raised strings of an angry passion in those that hear me; nor have I the terror of thinking, that if those strings cannot be snapt by the stroke, they will be only provoked into a more instigated vibration. Whatever I address to the Court in point of law, or to the jury in point of fact, will be heard not only with patience, but with an anxious desire to supply what may be defective in the defence.

I must observe, that this happy change in the minds and feelings of all men, is the natural consequence of that system of mildness and good temper which has been recently adopted, and which I now exhort you, gentlemen, to imitate and improve upon; that you may thereby demonstrate to ourselves, to

Great Britain, and to the enemy, that we are not that assemblage of fiends which we had been alleged to be, unworthy of the ordinary privilege of regular justice, or the lenient treatment of a merciful government.

It is of the utmost importance, gentlemen, to be on your guard against the wicked and mischievous representation of the circumstances which have called you now together; you ought not to take from any unauthenticated report those facts which you can have directly from sworn evidence. I have heard much of the dreadful extent of the conspiracy against this country—of the narrow escape of the government from a danger permitted to increase by a want of vigilance and caution. You now see the fact as it is; by the judicious adoption of a mild and conciliatory system of conduct, what was six years ago a formidable rebellion, has now dwindled down to a drunken, riotous insurrection—disgraced certainly by some odious atrocities;—its objects, whatever they were, no doubt highly criminal;—but as an attack upon the state, of the most contemptible insignificance. I do not wonder, that the patrons of burning and torture should be vexed that their favourite instruments were not employed in recruiting for the rebellion. I have no doubt that had they been so employed, the effect would have followed, and that an odious, drunken insurrection would have easily been swelled into a formidable rebellion; nor is it strange, that persons so mortified, should vent themselves in wanton exaggerated misrepresentation, and in unmerited censure—in slandering the nation in the person of the viceroy—and the viceroy in the character of the nation—and that they should do so, without considering that they were weakening the common resources against common danger, by making the different parts of the empire odious to each other; and by holding out to the enemy, and falsely holding out, that we were too much absorbed in civil discord to be capable of effectual resistance. In making this observation, my wish is merely to refute a slander upon my country. I have no pretension to be the vindicator of his excellency (the lord lieutenant of Ireland), whose person I do not know that I have ever seen; at the same time, when I am so necessarily forced upon the subject, I feel no disposition to conceal the respect and satisfaction with which I saw the king's representative comport himself, as he did, at a crisis of no little anxiety, though of no considerable danger. If we believe the evidence we have heard, I think it was a proof of his excellency's firmness and good sense not to discredit his own opinion of his confidence in the public safety, by an ostentatious display of unnecessary open preparation; and I think he did himself equal honor, by preserving his usual temper, and not suffering himself to be exasperated by the event, when it did happen, into the adoption of violent or precipitate measures. Perhaps

I may even be excused, if I confess that I was not wholly free from some professional vanity, when I saw that the descendant of a great lawyer * was capable of remembering what without the memory of such an example, he perhaps might not have done, that even in the moment of peril, the law is the best safeguard of the constitution. At all events, I feel that a man, who at all times has so freely censured the extravagancies of power and force as I have done, is justified, if not bound, by the consistency of character, to give the fair attestation of his opinion to the exercise of wisdom and humanity wherever he finds them, whether in a friend or a stranger; and therefore I accede most heartily to what Mr. Attorney General has stated respecting the slowness and deliberation with which this commission has proceeded.

I hope, gentlemen, that these preliminary observations have not been wantonly and irrelevantly delaying you from the question which you are to try, and which I am ready to enter into; but there still remains a circumstance to be observed upon for a moment before you enter upon the real subject of your inquiry, the guilt or innocence of the prisoner;—the fact which has been so impressively stated,—and which I am sure the attorney general would lament should produce the consequences not intended by him in such statement,—the never to be too much lamented fate of that excellent man, my lord Kilwarden. It is impossible for any man of feeling, having a head or heart, not to look at the infernal transaction with the utmost horror and indignation—I had known him for twenty years—no man possessed more strongly than he did, two qualities—he was a lover of justice and of humanity almost to a degree of weakness, if it can be a weakness. But let us not wantonly slander the character of the nation by giving any countenance to the notion, that the horror of such a crime could be extended farther than the actual perpetrators of the odious deed. The general indignation, the tears that were shed at the sad news of his fate, show that we are not that nest of demons, on whom any general stigma could attach from such an event. The wicked wretch himself, perhaps, has cut off the very man through whose humanity he might have escaped the consequences of other crimes; and by an hideous aggravation of his guilt, has given another motive to Providence to trace the murderer's steps, and secure the certainty of his punishment; but on this occasion, you, gentlemen of the jury, must put it out of your minds, and think nothing of that valuable man, save his last advice, "that no person should perish, but by the just sentence of the law;" and that advice I hope you will honour, not by idle praise, but by strict observance.

As to the evidence, give me leave to advert

to one circumstance, which ought to be removed from your minds; it was adverted to before, and I do not believe it was resisted by the officers of the crown; it occurred in the former case.—No act of parliament or commission under the great seal can be evidence in such a case as this.

Mr. Attorney General.—My lord, I hope Mr. Curran will excuse me for interrupting him.—No allusion was made to the act of parliament or the commission in this case; and though I did advert to them in the former no attempt was made to rely upon them as evidence.

Mr. Curran.—I mentioned the circumstance in the confidence that it would be given up as not applicable in evidence, and the learned gentleman will please to recollect, that he referred to the first statement made by him, and even to the verdict found yesterday, and therefore it is right upon my part to take notice of that which might make an impression upon the jury.

Lord Norbury.—This much we must say, that no notice has been taken by the Bench of any act of parliament or any other document but what has been proved in evidence before us.

Mr. Curran.—If I had not been interrupted by the anxiety of the attorney general, I should have added, that as the statute, if offered, would not be evidence, much less was the statement evidence. He also suggested that notoriety would be evidence; but however that may be with respect to a grand jury, it can have no influence with a petit jury. It may as well be said, that the notoriety of a man having committed a crime, is evidence of his guilt. Notoriety is at best another name for reputation, which cannot even by law be given in evidence in any criminal case, and which *à fortiori* could not sustain a verdict of conviction.

Mr. Justice Finucane.—Public war is always taken from notoriety.

Mr. Curran.—But I do not think, that insurrection can take its character of innocence or guilt from notoriety. And will add to the jury, what I am certain will meet the acquiescence of the Bench, that though the jury should leave their houses without any doubt of the fact, yet it is their duty to forget the notoriety and attending to their oaths to decide according to the evidence, the probability of such a conspiracy at the present time. It is clear from the evidence, that it cannot be imputed to any particular sect, or party, or faction; because no sect or faction could fail (had they acted in it) of engaging one hundred times the number of deluded instruments in their design. We may then fairly ask, is it likely, that the country at large, setting even apart all moral ties of duty or allegiance, or the difficulty or the danger, could see any motive of interest to recommend to them the measure of separating from England or fraternizing with France? is there any descrip-

* Lord Hardwicke.

tion of men in Ireland, who could expect any advantage from such a change? and this reasoning is more pertinent to the question, because politics now are not as heretofore a dead science in a dead language: they have now become the subject of the day, vernacular and universal, and the repose which the late system of Irish government has given the people for reflection, has enabled them to consider their own condition, and what they or any other country could have to hope from France, or rather from their present master. I scorn to allude to that person merely to scold or revile him; unbecoming obloquy may show that we do not love the object, but not that we do not fear him. What is the present condition of Buonaparté? a stranger, an usurper, getting possession of an extensive, proud, volatile and capricious people; getting that possession by military force,—able to hold it only by force, to secure his power he found—or thought he found—it necessary to abolish all religious establishments, as well as all shadow of freedom:—he has completely subjugated all the adjoining nations.

Now, it is clear, there are but two modes of holding states, or the members of the same state together, namely, community of interest or predominance of force. The former is the natural bond of the British empire: Their interests, their hopes, their dangers, can be no other than one and the same, if they are not stupidly blind to their own situation; and stupidly blind indeed must they be, and justly must they incur the inevitable consequences of that blindness and stupidity, if they have not fortitude and magnanimity enough to lay aside those mean and narrow jealousies, which have hitherto prevented that community of interest and unity of effort by which alone we can stand, and without which we must fall together. But force only can hold the acquisitions of the French consul. What community of interest can he have with the different nations that he has subdued and plundered?—clearly none. Can he venture to establish any regular and protected system of religion among them? Wherever he erected an altar, he would set up a monument of condemnation and reproach upon those wild and phantastic speculations which he is pleased to dignify with the name of philosophy, but which other men, perhaps because they are endowed with a less aspiring intellect, conceive to be a desperate anarchical atheism, giving to every man a dispensing power for the gratification of his passions, teaching him that he may be a rebel to his conscience with advantage, and to his God with impunity. Just as soon would the government of Britain venture to display the crescent in their churches, as an honorary member of all faiths show any reverence to the cross in his dominions. Apply the same reasoning to liberty. Can he venture to give any reasonable portion of it to his subjects at home, or his vassals abroad? The answer is

obvious: sustained merely by military force, his unavoidable policy is to make the army everything, and the people nothing. If he ventured to elevate his soldiers into citizens, and his wretched subjects into freemen, he would form a confederacy of natural interest between both, against which he could not exist a moment. If he relaxed in like manner with Holland, or Belgium, or Switzerland, or Italy, and withdrew his armies from them, he would excite and make them capable of instant revolt. There is one circumstance which just leaves it possible for him not to chain them down still more rigorously than he has done, and that is, the facility with which he can pour military reinforcements upon them in case of necessity. But destitute as he is of a marine, he could look to no such resource with respect to any insular acquisition; and of course he should guard against the possibility of danger by so complete and merciless a thralldom, as would make any effort of resistance physically impossible. Perhaps, my lords and gentlemen, I may be thought the apologist, instead of the reviler of the ruler of France: I affect not either character—I am searching for the motives of his conduct, and not for the topics of his justification. I do not affect to trace those motives to any depravity of heart or of mind, which accident may have occasioned for a season, and which reflection or compunction may extinguish or alloy, and thereby make him a completely different man with respect to France and the world; I am acting more fairly and more usefully to my country, when I show, that his conduct must be so swayed by the permanent pressure of his situation, by the tyrannical control of an unchangeable and inexorable necessity, that he cannot dare to relax or relent, without becoming the certain victim of his own humanity or contrition.

I may be asked, are these my own speculations? or have others in Ireland adopted them? I answer freely, *non meum hic sermo est*. It is, to my own knowledge, the result of serious reflection, in numbers of our countrymen. In the storm of arbitrary sway, in the distraction of virtue and suffering, the human mind had lost its poise and its tone, and was incapable of sober reflection; but by removing those terrors from it, by holding an even hand between all parties, by disdaining the patronage of any sect or faction, the people of Ireland were left at liberty to consider her real situation and interest; and happily for herself, I trust in God she has availed herself of the opportunity. With respect to the higher orders, even of those who thought they had some cause to complain, I know this to be the fact—they are not so blind as not to see the difference between being proud, and jealous, and punctilious, in any claim of privilege or right between themselves and their fellow-subjects, and the mad and desperate depravity of seeking the redress of any dissa-

dissatisfaction they might feel, by an appeal to force, or the dreadful recourse to treason and to blood. As to the humbler orders of our people,—for whom I confess I feel the greatest sympathy, because there are more of them to be undone, and because from want of education they must be more liable to delusion,—I am satisfied the topics to which I have adverted apply with still greater force to them, than to those who are raised above them. I have not the same opportunity of knowing their actual opinions; but if their opinions be other than I think they ought to be, would to God they were present in this place, or that I had the opportunity of going into their cottages,—and they well know I would not disdain to visit them, and to speak to them the language of affection and candour on the subject,—I should have little difficulty in showing to their quick and apprehensive minds, how easy it is, when the heart is incensed, to confound the evils which are inseparable from the destiny of imperfect man, with those which arise from the faults or errors of his political situation. —I would put a few questions to their candid and unadulterated sense:—Do you think you have made no advance to civil prosperity within the last twenty years? Are your opinions of modern and subjugated France the same that you entertained of popular and revolutionary France fourteen years ago? Have you any hope, that, if the first consul got possession of your island, he would treat you half so well as he does those countries at his door, whom he must respect more than he can respect or regard you? And do you know how he treats those unhappy nations. You know that in Ireland there is little personal wealth to plunder; that there are few churches to rob;—can you then doubt, that he would reward his rapacious generals and soldiers, by parcelling out the soil of the island among them, and by dividing you into lots of serfs to till the respective lands to which you belonged, or sending you, as graziers, to enjoy the rocks of Malta and Gibraltar. Can you suppose, that the perfidy and treason of surrendering your country to an invader, would to your new master be any pledge of your new allegiance. Can you suppose that while a single French soldier was willing to accept an acre of Irish ground, that he would leave that acre in the possession of a man who had shown himself so wickedly and stupidly dead to the suggestions of the most obvious interest, and to the ties of the most imperious moral obligations? What do you look forward to with respect to the aggrandizement of your sect? Are you Protestants? he has abolished Protestantism with christianity. Are you Catholics? do you think he will raise you to the level of the Pope? perhaps, and I think, he would not:—but if he did, could you hope more privilege than he has left his holiness? And what privilege has he left him? he has reduced

his religion to be a mendicant for contemptuous toleration, and he has reduced his person to beggary and to rags. Let me ask you a farther question: Do you think he would feel any kind hearted sympathy for you? Answer yourselves by asking What sympathy does he feel for Frenchmen, whom he is ready by thousands to bury in the ocean in the barbarous gambling of his wild ambition? What sympathy then could bind him to you? He is not your countryman: the scene of your birth and your childhood is not endeared to his heart by the reflection that it was also the scene of his. He is not your fellow Christian:—he is not therefore bound to you by any similarity of duty in this world, or by any union of hope beyond the grave. What, then, could you suppose the object of his visit or the consequence of his success? Can you be so foolish as not to see that he would use you as slaves while he held you; and that when he grew weary, which he soon would become, of such a worthless and precarious possession, he would carry you to market in some treaty of peace; barter you for some more valuable concession; and surrender you to expiate, by your punishment and degradation, the advantage you had given him by your follies and your crimes.

There is another topic on which a few words might be addressed to the deluded peasant of this country: he might be asked—What could you hope from the momentary success of any effort to subvert the government by mere intestine convulsion? Could you look forward to the hope of liberty or property; where are the characters, the capacities, and the motives of those that have embarked in those chimerical projects?—you see them a despicable gang of needy adventurers; desperate from guilt and poverty; uncountenanced by a single individual of probity or name; ready to use you as the instruments, and equally ready to abandon you by treachery or flight, as the victims of their crimes. For a short interval murder and rapine might have their sway; but do not be such fools as to think, that though robbing might make a few persons poor, it could make many persons rich. Do not be so silly as to confound the destruction of property with the partition of wealth. Small must be your share of the spoil, and short your enjoyment of it. Soon, trust me, very soon would such a state of things be terminated by the very atrocities of its authors. Soon would you find yourselves subdued, ruined, and degraded. If you looked back, it would be to character destroyed, to hope extinguished. If you looked forward, you could see only the dire necessity you had imposed upon your governors of acting towards you with no feelings but those of abhorrence, and of self-preservation—of ruling you by a system of coercion, of which alone you would be worthy—and of loading you with taxes, that is, selling the food and raiment which your honest labour might earn for your family,

to defray the expense of that force, by which only you could be restrained.

Say not, gentlemen, that I am inexcusably vain when I say, would to God that I had an opportunity of speaking this plain, and I trust, not absurd language to the humblest orders of my countrymen. When I see what sort of missionaries can preach the doctrines of villainy and folly with success, I cannot think it very vain to suppose, that they would listen with some attention and some respect to a man who was addressing plain sense to their minds, whose whole life ought to be a pledge for his sincerity and affection—who had never in a single instance deceived, or deserted, or betrayed them—who had never been seduced to an abandonment of their just rights, or a connivance at any of their excesses, that could threaten any injury to their character or their condition.

But, perhaps, I have trespassed too much upon your patience by what may appear a digression from the question. The motive of my doing so, I perceive by your indulgent hearing, you perfectly comprehend. But I do not consider what I have said as a mere irrelevant digression with respect to the immediate cause before you. The reasoning comes to this: the present state of this country shows, that nothing could be so stupidly and perversely wicked as a project of separation or of French connexion—and, of course, nothing more improbable than the adoption of such a senseless project. If it be then so senseless, and therefore so improbable, how strong ought the evidence be on which you would be warranted in attesting on your oaths, to England and to France, so odious an imputation on the good sense and loyalty of your country. Let me revert again to the evidence which you have heard to support so incredible a charge.—I have already observed on the contemptible smallness of the number—a few drunken peasants assembled in the outlets; there, in the fury of intoxication, they committed such atrocities as no man can be disposed to defend or to extenuate; and having done so, they flee before a few peace-officers, aided by the gallantry of Mr. Justice Drury—who, even if he did retreat, as has been insinuated, has at least the merit of having no wish to shed the blood of his fellow-Christians, and is certainly entitled to the praise of preserving the life of a most valuable citizen and loyal subject.

In this whole transaction, no attempt, however feeble or ill-directed, is made on any place belonging to or connected with the government. They never even approach the barrack, the castle, the magazines. No leader whatsoever appears; nothing that I can see to call for your verdict, except the finding the bill and the uncorroborated statement of the attorney-general. In that statement too, I must beg leave to guard you against mistake in one or two particulars:—as to what he said of my lord Kilwarden, it was not unnatural to feel as he seemed to do at the recollection, or

to have stated that sad event as a fact that took place on that occasion—but I am satisfied, he did not state it with the least intention of agitating your passions, or of letting it have the smallest influence on your judgment.

In your inquiry into a charge of treason, you are to determine upon evidence; and what is there in this case to connect the prisoner with the general plan or the dépôt which was found? I do not say that the account of these matters was not admissible evidence; but I say, that the existence of these things without a design, or proof of a design, without connexion with the prisoner, cannot affect his life; for you cannot found a verdict upon construction or suspicion.

The testimony of Adams seemed to have been brought forward as evidence of greater cogency.—He saw the prisoner go out with a bag half full, and return with it empty. I am at a loss to conjecture what they would wish you to suppose was contained in it:—but men are seen at his house; does it follow that he was connected with the transactions in Thomas-street? The elder Adams does not appear to have stated any thing material but his own fears. The proclamation may be evidence of a treasonable conspiracy existing; but it is no evidence against the prisoner, unless he be clearly connected with it; and in truth, when I see the evidence on which you are to decide, reduced to what is legal or admissible, I do not wonder that Mr. Attorney General himself should, upon the first trial, have treated this doughty rebellion with the laughter and contempt it deserved.

Where now is this providential escape of the government and the castle? Why simply in this; that no one attacked the one or the other! and that there were no persons that could have attacked either. It seems not unlike the escape which a young man had of being shot through the head at the battle of Dettingen; by the providential interference by which he was sent twenty miles off on a foraging party, only ten days before the battle.

I wish from my heart that there may be now present some worthy gentleman who may transmit to Paris a faithful account of what has this day passed. If so, I think some loyal absentee may possibly find an account of it in the Publicist or the Moniteur—and somewhat in this way:—"On the 23rd of July last, a most splendid rebellion displayed her standard in the metropolis of Ireland, in a part of the city, which, in their language, is called the Poddle—the band of heroes that came forth at the call of patriotism, capable of bearing arms, at the lowest calculation, must have amounted to little less than two hundred persons! The rebellion advanced with most intrepid steps till she came to the site of the old four courts and tholsel. There she espied a decayed pillory, on which she mounted in order to reconnoitre; but she found to her great mortification, that the re-

bels had staid behind, she therefore judged it right to make her escape, which she effected in a masterly manner down Dirty-lane; the rebels at the same time retiring in some disorder from the Poddle, being hard pressed by the poles and lanterns of the watchmen, and being additionally galled by Mr. Justice Drury, who came to a most unerring aim upon their rear, on which he played without any intermission with a spy-glass from his dining-room window! *Rare antecedentem scelerum deseruit pana pede claudo.* It is clearly ascertained she did not appear in her own clothes, for she threw away her regimental jacket before she fled, which has been picked up, and is now to be seen at Mr. Carleton's (a Frenchman I suppose), at sixpence a head for grown persons, and three-pence for a nurse and child. It was thought at first to be the work of an Irish artist, who might have taken measure in the absence of the wearer, but by a bill and receipt found in one of the pockets, it appears to have been made by the actual body tailor of her august highness the consort of the first consul; at present it is but poorly ornamented, and it is said the Irish volunteers have entered into a subscription to trim it, if it shall be ever worn again."

Happy! most happy is it for these islands, that those rumours which are so maliciously invented and circulated to destroy our confidence in each other, to invite attack and dispirit resistance, turn out on inquiry to be so ludicrous and contemptible, that we cannot speak of them without laughter, or without wonder that they did not rather form the materials of a farce in a puppet-show, than of a grave prosecution in a court of justice.

There is still, gentlemen of the jury, another topic material for you to be reminded of:—This is the first trial for high treason that has occurred since the union of these islands. No effectual union can be achieved by the mere letter of a statute; you may therefore declare yourselves incapable of legislation, but no mere contract can of itself work an effectual incorporation of the countries. Do not imagine, that bigotry can blend with liberality, or barbarism with civilization. If you wish really to be united with Great Britain, teach her to respect you, and do so by showing her that you are fit objects of wholesome laws—by showing her that you are as capable of rising to a proud equality with her in the exercise of social duties and civil virtues, as every part of the globe has proved you to be in her fleets and her armies; show her that you can try this cause as she would try it; that you have too much sense and humanity to be borne away in your verdict by despicable panic or brutal fury; show her that in prosecutions by the state, you can even go a step beyond her, and that you can discover and act upon those eternal principles of justice, which it has been found necessary in that country to enforce by the coercion of law. You cannot but feel that I allude to the statute which

requires two witnesses in treason. Our statute does not contain that provision; but if it were wise to enact it there as a law, it cannot be other than wise to adopt it here as a principle, unless you think it discreet to hold it out, as your opinion, that the life of man is not as valuable here, and ought not to be as secure as in the other part of the empire; unless you wish to prove your capability of equal rights and equal liberty with Britain, by consigning to the scaffold your miserable fellow-subject, who, if tried in England on the same charge and the same evidence, would by law be entitled to a verdict of acquittal. I trust you will not so blemish yourselves: I trust you will not be satisfied even with a cold imitation of her justice, but on this occasion you will give her an example of magnanimity, by rising superior to the passion or the panic of the moment.

If in any ordinary case, in any ordinary time, you have any reasonable doubt of guilt, you are bound by every principle of law and justice to acquit; but I would advise you at a time like this, rather to be lavish than parsimonious in the application of that principle—even though you had the strongest suspicion of his culpability, I would advise you to acquit—you would show your confidence in your own strength—that you felt your situation too high to be affected in the smallest degree by the fate of so insignificant an individual:—Turn to the miserable prisoner himself—tainted and blemished, as he possibly may be—even him you may retrieve to his country and his duty by a salutary effort of seasonable magnanimity. You will inspire him with reverence for that institution, which knows when to spare, as well as when to inflict—and which instead of sacrificing him to a strong suspicion of his criminality, is determined, not by the belief, but by the possibility of his innocence, and dismisses him with indignation and contemptuous mercy.

Richard Wallace sworn.—Examined by
Mr. Mac Nally.

Where do you live?—In Plunket-street.

What number?—No. 64.

Did you live there on the 23rd of July last?—I did.

Do you know the prisoner?—I do.

Does he live in the same house with you?—He does; I own the house.

Then, he is your tenant?—He is.

Do you know where the prisoner was that evening?—I do not; but he was at home at ten that night at his own door.

Do you know the younger Adams?—I do. He is a married man?—He is.

Do you know of any dispute between him and the prisoner?—I do not.

Did you see the prisoner at an earlier hour that evening?—I did not.

What time did he return from his stall?—His stall! He is a cast clothes man.

What time does he generally come home in

the evening?—About four or five, according as he makes a bargain.

What time did you return from your work that evening?—About nine o'clock.

Were you out that evening?—No, I went up stairs to bed, and did not rise till eight the next morning.

Richard Wallace cross-examined by
Mr. Plunket.

You say the prisoner's trade is that of a cast clothes man?—Yes.

His usual habit was to return home about four or five in the evening?—It was according as he got bargains, he was a very honest poor man for the year and a half he was with me.

Did you hear of any thing particular doing that evening?—Not any thing; only a parcel of men whom I thought watchmen, and I did not mind them.

They passed towards Patrick-street?—They did.

How many were there?—Seven or eight.

Was that before you saw the prisoner?—It was about half an hour.

You did not see any more?—No.

You never saw a pike?—Not till that night.

You heard of some little disturbance that night?—I did.

Were you at work that night?—I was.

Do you now think they were watchmen you saw?—No.

What do you think they were?—It seems they were rebels.

And this was before the prisoner came home?—It was.

Did you see the prisoner again that night?—I did not.

When did you see him next?—I heard he went to a child at nurse—

When did you see him?—In about a fortnight.

He brought back the child?—I cannot say; I did not see it.

Where was it at nurse?—I cannot tell.

You counted him an honest man, could he afford to stay a fortnight at the place of his child's nurse?—I cannot say.

When did you hear of the work in Thomas-street?—Next morning about eight.

Was the prisoner at home then?—I cannot tell.

Margaret Lappin sworn.—Examined by
Mr. Curran.

Where do you live?—In Thomas-street.

Do you live in the house with the prisoner?—Sometimes.

Did you lie there on the night of the 23rd of July last?—I did.

Were you there all day?—I was.

Did you see the prisoner on that day?—I did, the whole day.

What was the latest hour you saw him?—Between nine and ten, when he went to bed.

Where did you sleep?—I did not sleep much that night.

Why not?—I heard the noise and could not sleep much.

Was the prisoner in bed that night?—He was.

By virtue of your oath?—He was.

Did he go to the country after that?—He did, to see a child who was very bad.

When did he go?—About a week after, and the child is not well yet.

Where was he taken?—At his own place, I was by.

Margaret Lappin cross-examined by
Mr. Mayne.

Pray, madam, —?—You need not ask me any more.

Why so?—Because I know no more.

Would you rather go away?—You may do what you please with me; I lived three years with the prisoner, and nursed some of his children.

You saw him on the next day?—I did.

Where?—In his own house.

And every day after?—Yes.

Was he public all that time?—He was.

Did you see him with Wallace that week?—I had no call to Wallace.

He lived in the house?—He did.

Could he be there without seeing the prisoner?—I cannot say.

Were you in bed that night?—No; I was up and down.

Where did you sleep?—In the parlour or shop.

Where did the prisoner sleep?—In the same place.

How long did he stay when he went to the country?—About a week.

He was taken the next day after he came home?—No, not till Wednesday; he came home on Saturday.

Did you see nine or ten men about his house that night?—I saw no mankind there that night.

You saw no arms or pikes that night?—No such thing.

Hugh Kelly sworn.—Examined by
Mr. Mac Nally.

Where do you live?—At No. 51, Plunket-street.

How long have you known the prisoner?—I cannot have known him less than 16 years.

Were you acquainted with him?—As a neighbour in the place.

What has been his general character as to loyalty or disloyalty?—I know nothing of his loyalty or disloyalty, or politics, or any thing of that kind. He was an honest industrious man, working for his family.

Laurence Walton sworn.—Examined by
Mr. Curran.

Where do you live?—In Plunket-street; I keep a broker's shop.

Do you know the prisoner?—Since he was a child:

Do you know his general character?—I always knew him to be an honest, industrious man.

Have you ever known his character impeached for disloyalty?—I know nothing about that.

Did you ever hear that it was impeached for disloyalty?—Never.

If it had been so impeached would it not come to your knowledge?—Perhaps it might; I know nothing of it.

John Hickey sworn.—Examined by
Mr. Curran.

Where do you live?—In Plunket-street, in the brokery line.

How long do you know the prisoner?—Fourteen years.

What is his general character?—An honest man.

What has been his character as to loyalty?—I cannot say: I know nothing about him, but that he was a hard-working man.

Do you mean to say he was a disloyal man?—I do not; I know nothing of it.

[Here the evidence closed, and the counsel for the prisoner and the crown respectively waived their right of observing upon the evidence.]

SUMMING UP.

Mr. Baron George.—Gentlemen of the Jury;—The prisoner at the bar is indicted of high treason, in conspiring the death of the king and levying war; and there are several overt acts laid in the indictment. I shall point your attention to those to which in my apprehension, the evidence is most applicable; because it is necessary in order to maintain indictments of this kind, that you should be satisfied, that one or more of the overt acts stated have been proved.

Gentlemen, the prisoner is accused of being one of a conspiracy formed to levy war against the government of the country, and of being one of a multitude of persons armed and arrayed for the purpose of levying war, and that he did actually levy war to overthrow the government of the country; and as I detail the evidence, you will see how far these facts have been proved.

The first witness examined was Edward Wilson, —

[Here the learned judge minutely recapitulated the evidence from his notes, and then proceeded.]

Now, gentlemen, the first question for you upon this occasion to form an opinion upon, is, whether there was in fact a rebellion or not?—or whether it was a rising or a riot of an inferior nature?—As to the question, whether there was a rebellion or not, you are to take into consideration all the circumstances of the case. You observe, that the first circumstance appearing is, knots of persons of various descriptions, some of them country-

men, others townsmen, about the hour of nine o'clock, apparently armed, speaking and consulting together:—All these making off, as if with one common mind, and running down Marshal-lane towards one end of Mass-lane.—The next thing that appears is, this crowd coming out of the other end of the lane, opening into Dirty-lane, carrying pikes upon their shoulders, moving slowly on, as if waiting for those who were arming themselves at the depôt, which was afterwards discovered to be in that lane. You are then to consider the evidence which has been given respecting the contents of that depôt, and it is for you to judge from the quantity of weapons there collected and the nature of them, whether it is likely, that they were to be used in riot, or whether they were not for some greater and higher object to be accomplished by those who collected them. There was not only a quantity of pikes thrown out to supply the number of men, who were to be armed upon that occasion, but six or seven thousand are left behind—there are ball cartridges, hand-grenades, bottle shot, uniforms, colours, and rockets, and besides all these, large bundles of Proclamations, wet, as if fresh from the press;—You have heard some part of the contents read, and you observe how it is entitled,—“The Provisional Government to the People of Ireland.” This proclamation does in express terms declare the purpose for which those weapons were provided. The proclamations were to be distributed among the people, after the weapons, there collected, should have achieved the object for which they were collected; and these proclamations seem to point out the first arrangement intended to be made, upon the overthrow of the government.

Then, gentlemen, you see farther that the multitude, then assembled, made the king's troops and forces the chief objects of their attack.—It is not essentially necessary, that it should appear, that the force collected and formed was adequate to the design of the overthrow of the government; but you are to consider, what the design was. Was it revolution, or any object of less magnitude?—Therefore if you cannot attribute all this preparation and conduct of the persons engaged, so far as appears to you, to any other design than revolution, you will consider whether the assertion in the indictment that war was levied against the government of the country, is true or not?—The fact does not in the defence that has been made for the prisoner seem to be controverted; but still you are to exercise your judgment whether all those materials, thus stored up secretly were collected and provided by insurgents and part of them used by them for a public design against the laws and constitution of the country? And if you do believe that they were collected and used after the purposes of such a conspiracy and by preconcert, then the material point for you to consider will be, whether this

was known to the prisoner, or whether he took any part to carry it into execution.

The evidence to show, that the prisoner had intimation of the design, rests upon the testimony of Adams, if you believe it; for every thing affecting the prisoner rests upon the credit you give the witness. From his testimony it appears, that upon the rocket going off, the prisoner made the exclamation, you have heard—then had his coat changed, took up a pike, and marched at the head of seven or eight men, making the declaration, which was stated, “that all who did not join should be put to death the next day”—You will naturally ask, how could all this happen, unless he previously knew of the matter, was acquainted with the rocket and the signal it was to convey.

Gentlemen, if you believe this, it is strong evidence to show that he knew of the design, and if he took up a weapon of that kind which all the other rebels had, and went in that direction where the other rebels were collected, you are to determine whether he did not move forward for the same purpose, and if you do believe it, that movement will be proof of the conspiracy and levying war, of which the prisoner is indicted.

As to the testimony by which the prisoner is charged, it unquestionably requires the most serious consideration. You will observe, gentlemen, that the evidence is given by an opposite neighbour, who was acquainted with the person of the prisoner for ten or twelve years, who was looking at him for a considerable time that evening and was watching his motions. This witness has given a most particular account of all the prisoner's movements that evening, as well specifying the acts which might be indifferent, as those tending to show his knowledge of and participation in the treasonable design. Therefore it will follow that this witness cannot be supposed to be mistaken as to the person of the prisoner; but in truth this is for your consideration. If this man has been deceiving us and telling us what is not true, we must consider him to be a monster of great enormity; it is not mere perjury to swear falsely upon this occasion—to convict an innocent man, who has a wife and children, and to deprive him of life by false testimony would be a most aggravated murder. You will consider, gentlemen, what motive this young man can have to destroy his neighbour in that manner. You observed the cross-examination of the witness, and the manner in which he gave his evidence. If you believe also the fact, that the prisoner went off the next morning, it will be strong evidence to corroborate the testimony of the witness.

As to the prisoner going off, there is a contrariety of evidence, which it is exclusively your province to decide upon.

You will also take into consideration the testimony of Margaret Lappin, stating, that the prisoner was at home the entire of the

day and went to bed at ten o'clock, and did not go out. If you believe her evidence it is impossible that the prisoner could be guilty of the facts stated by the witness for the prosecution.

Therefore, gentlemen, upon the whole of the case, you are to determine, whether the testimony of Adams is to be believed or not;—because if it is to be believed, it is our duty to tell you, that it proves the overt acts in the indictment.

But if you have such doubts as reasonable men may entertain in such a case, it is your duty to acquit the prisoner.

The jury retired, and after deliberating for five minutes, returned a verdict of GUILTY.

The prisoner was remanded.

On Friday the 2nd of September the prisoner was brought up for judgment. The indictment was read, and he was asked, what he had to say, why judgment of death and execution should not be awarded against him?

Prisoner.—I have nothing to say, but that I was prosecuted wrongfully, I beg the mercy of the Court, and to have the benefit of clergy.

Mr. Mac Nally intimated, that the prisoner's desire was, to have a clergyman of his own persuasion to visit him.

Mr. Attorney General said he was not aware that any difficulty occurred in that respect, but he would give a general order that a proper person should be admitted.

Mr. Baron George.^{*}—Owen Kirwan, after a full and patient hearing—after a most minute and impartial investigation of the charge preferred against you, you have been convicted of high treason. It appears that you were a dealer in old clothes, and that you used the semblance of industry for the most wicked and destructive purpose,—a purpose which, could you and your unprincipled and cruel associates effect, would dry up all the sources of industry, confound all order, destroy all security, and leave your country a hideous ruin.

It appears that you were an active emissary of rebellion, and had obtained, by that activity, the rank of a leader:—You were not of the multitude of devoted victims, who are led to slaughter and plunged in crime, by imposition on their ignorance and their passions; you seemed perfectly aware of what you were about, well acquainted with the plan and views of rebellion, and you engaged in it with cool deliberation and systematic wickedness.

You were calmly tried, and ably defended; that defence was heard with patience, and you have had every advantage possible to be derived from the laws—more tender of the life

^{*} This address to the prisoner, on passing sentence was very much abridged in *Mr. Ridgeway's* report, but it is printed in the text entire.

of the subject, and all the rights attached to society, than those of any other country upon the face of the earth: and surely, when the excellence of those laws is considered, the protection they afford, and the pure and rational freedom enjoyed under our unequalled constitution, it is truly astonishing that any man, or body of men, could be found meditating or attempting the destruction of so beautiful a system! It would be incredible, if proofs the most melancholy were not furnished of the contrary, that such men could be found living under the dominion of a sovereign who has given to his people, and to the people of this country in particular, forty-three years experience of the most exalted virtues, and the most parental anxiety for their happiness and welfare. But if, insensible to the beauties of our constitution, and the allegiance which wisdom and goodness should have endeared to you and your associates in crime, it is wonderful how you could be so insensible to your own safety—so wretchedly insane—as to think, but for one moment, that you could seize upon a government fenced round by such impregnable support—such great wealth and power,—such loyalty in the people,—and such great armies formidable in numbers, in discipline, and in bravery—How is it possible that you could be so mad as to think that any rabble insur-

rection could disturb a government not undefined, nor its members unknown?—An amiable and virtuous viceroy, the faithful representative of his sovereign's goodness, is open to access, and visible to those he governs; every member of his administration is the same, none are ashamed or afraid to show their honest fronts to the mid-day sun.

Owen Kirwan, I most earnestly exhort you, to use the time allotted to you in this world, in sincere and penitent endeavours to reconcile your soul to that God, before whose awful judgment seat it is to appear so soon; think only of your salvation as a contrite christian should, and do not leave this world with a lie in your mouth, and go before your Maker, swaggering in vain and boastful guilt. Believe me, unhappy man, that to disclose all you know, and thus to make to your injured country and offended God all the atonement in your power, will prove an inexpressible consolation to you in your last moments, and infuse into your soul that sweet consciousness of right, which can alone qualify the bitter draught you are about to take, and justify a hope of future pardon and happiness.

Sentence of death was then passed on the prisoner, and he was accordingly executed the next day in Thomas-street.

657. Trial of JAMES BYRNE for High Treason; before the Court holden under a Special Commission at Dublin on Friday September the 2nd: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.

Friday, September 2nd,† 1803.

This day the Court sat pursuant to adjournment.

Judges present:—Lord Norbury, Mr. Justice Finucane, Mr. Baron George, and Mr. Baron Daly.

James Byrne, who had been arraigned upon the following indictment, on Wednesday the 31st of August, was put to the bar for trial.

County of the City of } THE jurors of our
Dublin, to wit, } lord the king upon
their oath present that James Byrne late of
Thomas-street, in the city and county of the
city of Dublin yeoman a subject of our said
lord the now king not having the fear of God
in his heart nor weighing the duty of his alle-
giance but being moved and seduced by the

instigation of the devil as a false traitor against our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and intending the peace and common tranquillity of this kingdom to disquiet molest and disturb and the government and constitution of this realm to change subvert and alter and our said lord the king from the royal state title honour power imperial crown and government of this kingdom to depose and deprive and our said lord the present king to death and final destruction to bring and to put he the said James Byrne on the 23rd day of July in the 43rd year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive

* From the Report of W. Ridgeway, esq. barrister at law.

† The preliminary proceedings will be found in Kearney's case, *ante*.

and our said lord the king to kill and bring and put to death.

And that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations, and compassing aforesaid he the said James Byrne as such false traitor as aforesaid, on the said 23rd day of July, in the 43rd year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did conspire confederate and agree to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this realm.

And that afterwards to wit on the said 23rd day of July in the said 43rd year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said James Byrne as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid did arm himself with and did carry a certain weapon called a pike with intent to associate himself with divers other false traitors armed with guns swords and pikes whose names are to the said jurors unknown for the purpose of raising levying and making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king within this kingdom.

And that afterwards to wit on the said 23rd day of July in the said 43rd year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said James Byrne as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the said jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said James Byrne against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

And the said jurors of our said lord the king upon their oath do further present that the said James Byrne being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said sovereign lord the king and wickedly de-

vising and intending to disturb the peace and public tranquillity of this kingdom, on the 23rd day of July in the 43rd year of the reign of our said lord the king with force and arms at Thomas-street in the city and county of the city of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom and in order to fulfil and bring to effect the said traitorous compassing imaginations and intentions last mentioned of him the said James Byrne he the said James Byrne afterwards to wit on the said 23rd day of July in the said 43rd year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully maliciously and traitorously assembled, and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of the said James Byrne against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

The prisoner pleaded, Not Guilty; and being asked, was he ready for his trial, said he was; whereupon he was put to his challenges, and the following jury was sworn, after three being set by on the part of the Crown, and five peremptory challenges by the prisoner.

John Tudor,
Benjamin Hallam,
George Thorpe,
John Keene,
John Campbell,
Andrew Richey,

John Charrurier,
Bennet Dugdale,
Charles Cox,
Hugh Craig,
Wm. Trocke,
John Salmon.

After the jury was sworn, Mr. Mac Nally moved, that Mr. Charles Ball might be assigned counsel for the prisoner, he having named only one counsel when formerly brought up for that purpose.

This motion was immediately granted as a matter of course.

The counsel and agents for the crown were the same as on the former trials.

Counsel for the Prisoner.—Mr. Mac Nally, Mr. C. Ball.

Agent.—Mr. L. Mac Nally.

The prisoner was given in charge to the jury.

Mr. O'Grady opened the indictment.

Mr. Attorney General.—My Lord, and Gentlemen of the Jury; The indictment has been

read, which charges the prisoner at the bar with the atrocious crime of high treason. It will be your duty, gentlemen, with the utmost attention to collect, from the evidence which will be submitted to you, whether in truth he is guilty of that crime or not.

It will be necessary for the counsel on the part of the crown, first to bring forward evidence to show that there existed in the city of Dublin, on the 23rd of July last, a rebellious and traitorous insurrection—a conspiracy to alter the form of our government by force—an attempt which, if successful, must lead to the destruction of many of the king's subjects, and ultimately of the king himself.

Having established that fact, the next object will be to show how far the prisoner at the bar participated in that rebellion. A man may be guilty of treason, either by planning or originating a rebellion in conspiracy with others, or afterwards by aiding and abetting the conspiracy, though not originally privy to the motives and designs of it.

Gentlemen, it will appear that in the course of that night, lieutenant Brady, at the head of a party of the 21st regiment, marched into Thomas-street—that the rebels gave him battle, and one or two of his men were wounded. Having defended themselves with great gallantry, and routed their assailants, they apprehended three persons,—first Kearney, next Roche, and thirdly the prisoner at the bar. I mention these circumstances rather to caution you not to allow, in the remotest degree, the crime of the prisoners, who have been convicted to be implicated with the case of the prisoner now upon trial—they may have been guilty, as they are found to have been, and yet it is possible that the prisoner now before you may be altogether innocent.

According to the information which I have, it is stated, that this man appeared a little on one side of the party of rebels in Thomas-street, who were met by lieutenant Brady—he came suddenly upon the prisoner, who had a pike in his hand; upon perceiving the persons who came near him, he threw away his pike and endeavoured to run, but was immediately seized. After a soldier had taken him he struggled to escape, so that it was necessary for a second soldier to assist in securing him.

Gentlemen, the prisoner as I understand, is not a native of Dublin, he is a baker in the town of Naas. I cannot conjecture what brought him to Dublin that evening, unless for the treasonable purpose with which we charge him. It is for him to show, that he was occupied in that hour upon lawful business, notwithstanding the agitation which then prevailed in the street.

In point of law, you will have the direction of the Court—the mere holding of a pike is not treason, any more than a pen or a stick—it is the *intention* with which it is taken up, that constitutes the crime; certainly the nature of the instrument itself, and the time and

manner of holding it, are circumstances which you will take into your consideration in collecting that intention. If you shall be of opinion, that the prisoner wilfully took it up, to aid or to countenance by his presence, those who were engaged in the traitorous design, you will be bound to find him guilty; but if on the other hand, he can make it appear to you that he held it innocently, you will acquit him.

I have observed to each jury, impanelled upon these trials, not to attend to anything but the evidence which shall be given in court. We desire nothing, but that a fair judgment should be formed upon the evidence which shall be given, by which both the crown and the prisoner must abide.

Edward Wilson, esq. being sworn and examined,—

Gave substantially the same evidence as upon the former trial. [*Vide* Kearney's case, p. 711.]

Wheeler Coulman, esq. being sworn and examined,—

Also gave same detail of his discovery of the depot, &c. as upon the former trials. [*Kearney's case*, p. 719; and *Roche's case*, p. 759.]

Serjeant Thomas Rice being sworn and examined,—

Proved the proclamation as in the case of Kearney. [*Vide* p. 722.]

Felix Brady, esq. sworn.—Examined by the Solicitor General.

You are a lieutenant of the 21st regiment?—Yes.

Where were you stationed upon the 23rd of July last?—At Cork-street barracks.

Did you at any time of the night see any number of people, and mention what happened?—I went out with a party, between forty and fifty men, for the purpose of going to Usher's-island, to report to colonel Browne the information I had received, of an armed mob being in the city—that our drum had beat to arms, and to know whether he would give me any orders, or would come himself to the barrack. On entering the narrow part of Thomas-street, leading out of James's-street, I met a man with a pike in his hand, very near the corner of the street facing James's-street. On seeing him, I asked him what he was going to do with the long pole which he had in his hand, to which he made no reply; I got a corporal to my assistance to take the pike out of his hand, I had supposed it was a pole; he struggled a good deal before he let it go. I then got assistance to put him between the sections; he struggled much and made a great noise, and immediately a bottle was thrown from a window on the left, which fell into the centre of the men, and a shot was fired from the right, which wounded one

of my soldiers, he was wounded in the belly through the liver, he is since dead. I then ordered my men to form sub-divisions, and prime and load. I heard an hurra in front, and a great noise of men coming forward—I heard their feet, but could not see them. When they advanced near me, the leading sub-division fired a volley; then the men kept up an independent fire, and from their light I observed near me on the left, some men with pikes; they fled in all directions when the firing was kept up about two minutes, leaving six killed and one dying close by me. There was a second prisoner brought to me, and one of my men said to me, "Here is the pike which he had;" that was Kearney; there were two other prisoners brought, but I cannot recollect them. I saw the prisoner at the bar at the guard-house in James's-street; he was brought there by the men with me, and lodged in the guard-house.

What time passed between your firing and your setting off for the guard-house?—Not more than ten minutes, on account of my wounded man taking me by the coat and asking leave to go to the barrack: I told him it was dangerous, but that I would face about, and leave him in James's-street barrack.

How soon were the two prisoners brought after the firing?—Almost immediately.

It was one transaction?—It was; I advanced a little and saw the dead men I just mentioned, and many pikes which were brought with us.

Felix Brady, esq. cross-examined by Mr. Mac Nally.

You mentioned that the night was very dark?—It was.

Had you or your party any kind of light?—None, but the flashing of the pans.

Upon the discharge of the pieces by your men, there must have been a smoke between the rebels and the soldiers?—That of course, if the wind blew it against the soldiers.

But it was a calm night?—It was.

Then the smoke would form a skreen between the two parties?—I think it would go up.

But for some time, would not the smoke create a darkness between your men and the opposite party?—It is reasonable that it would.

Court.—Could you see the men with pikes, notwithstanding the smoke?—I could, and did see them with pikes like white poles; the men I saw were upon my left, not in front, so I saw them distinctly.

Wheeler Coulman, esq. again examined.

What colour were the pikes which you found in the dépôt?—They were white, made of deal and very light.

Robert Watt sworn.—Examined by Mr. Townsend.

Look about and try if you know the prisoner at the bar?—I do.

You belong to the 51st regiment?—I am a private in that regiment.

When did you first see the prisoner?—I saw him in Thomas-street.

Upon what day?—On the night of the 23rd of July.

Were you there upon duty?—Yes.

Under whose command?—Under lieutenant Brady.

You were one of his party?—Yes.

In what situation were you?—I was in the second division, the left-hand man, close by the pavement when the firing began.

Where did you see the prisoner?—I saw the prisoner on the pavement with a pike on his shoulder about two yards from me.

Do you know the distinction between the pavement and what we call the flags?—I call them both pavement; one is called broad pavement.

That is the flagged part?—Yes.

Was it there you saw the prisoner?—Yes.

What did you do?—I cried out to him, to stop; when I said that, he threw his pike from him, and I seized him.

Why did you desire him to stop?—He was endeavouring to pass us.

Did he stop when you bid him?—He then threw his pike from him, and I caught him by the breast and brought him among the men.

Did he submit?—No; he struggled to get off, and I was obliged to get another soldier to my assistance.

He is a strong man?—He is, and I had my musquet in one hand, and I held him with the other.

How did you dispose of him afterwards?—I held him all the time during the firing, and could not get to fire any. I kept hold of him, till Mr. Brady gave orders to march back towards James's-street barrack.

After those orders were given, did the prisoner remain quiet?—He struggled the whole time going up James's-street, and from that to the commander in chief.

Where did you first stop with him?—We stopped a few minutes at the barrack in James's-street.

Court.—What is the name of the man who assisted you in holding the prisoner?—His name is Goulding.

Mr. Townsend.—As you stood before you seized the prisoner, you were on the left: where did Goulding stand?—In the same division, near the centre.

You stopped in James's-street barrack?—Yes.

How long?—A few minutes; I cannot say exactly.

Did you take the prisoner into the barrack?—Yes; he was taken inside.

Had you a light?—Yes; there was a candle in the guard-house.

Was lieutenant Brady there?—I am not positive that he came into the guard-house; he was there at the barrack with us.

Did any other soldier assist you in taking

the prisoner?—Yes, one North; he heard the pike fall when I called out to the man to stop.

Did you go with the prisoner to the commander in chief?—Yes.

How did he conduct himself?—He struggled the whole way.

Robert Watt cross-examined by *Mr. Ball*.

Did this man receive any strokes from the soldiers?—I believe he did get a scalp or two.

You say, when the firing began you saw this man?—Yes.

You could not see him before?—He was quite close to me, not above two yards.

There was an independent fire kept up?—Yes, after the first volley, by the subdivision.

How many subdivisions were there in the whole?—Four, I think.

Each in two ranks?—Yes.

In what direction was the volley?—Straight down the street.

How far was the first division advanced before the second?—About six paces.

Were you in front or rear of the second subdivision?—In front.

When you saw this man he was endeavouring to pass?—He was.

How could you see that the man was endeavouring to pass?—He was doing all he could to pass.

How near were you to the flags?—Close to them.

Your face was to Thomas-street?—Yes, down towards the market-house.

And his was to James's-street?—It was.

Was he running fast?—He was.

It was when he moved you saw him?—Yes.

The night was dark?—It was.

Suppose you had moved sideways to the left and he had stopped, how near would he be to you?—When I bid him stop, I only stepped to the flags and gripped him.

Then he was close to you, and you were in the second division?—Yes.

Five or six paces behind the first division?—Yes.

They fired towards the market-house?—Yes.

And he was upon a line with you behind the first division?—Yes.

How many feet do you reckon in a pace?—Five feet.

Then you were thirty or five and twenty feet behind the first division?—Not so much.

[Here the witness pointed to an object in Court by way of showing the distance; representing it as between ten and fifteen feet.]

Did you hear lieutenant Brady charging a man with having presented a pike at him?—No; I was too busy taking care of the man I had.

Did you discharge your piece that night?—No.

Jury.—From the time you took the priso-

ner in Thomas-street, did you let him out of your custody, till you saw him again in the guard-house?—No; I never let him out of my hand.

James Waddle North sworn.—Examined by the *Attorney General*.

You are a private in the 21st regiment?—I am.

Where were you on duty the night of the 23rd of July?—I was taken from Cork-street to James's-street and Thomas-street, under the command of lieutenant Brady.

Did you ever see the prisoner at the bar before?—I did.

When did you first see him?—As near as I recollect about ten o'clock on the night of the 23rd of July in Thomas-street.

Mention the circumstances attending your having taken notice of him?—I was in the second subdivision under lieutenant Brady's command, and seeing Watt go out of his rank to take a prisoner, I made after him, and came up as the prisoner threw down his pike; I came up time enough to hear the pike fall, but did not actually see the pike in the prisoner's possession.

What did you do then?—Watt brought the prisoner to the division, he was struggling very hard for liberty.

Court.—In order to get loose do you mean?—Yes, my lord; to liberate himself, to get clear of us. There was a man of the name of Goulding assisting Watt, and I thought he would get away from them, and I came up to them, and the prisoner behaved very refractory; he could hardly be kept in custody till we brought him to James's-street, and from thence to the commander of the forces.

Was he refractory the whole way?—He was, my lord, but more particularly in James's-street.

Did you see him by candle-light that night?—Not till I saw him at the commander of the forces; but I had no occasion, being so close to him, and by the lamp I could see his person.

Jury.—What became of the pike?—It was taken by the men of the division with the rest.

Did you ever quit sight of the prisoner from the time he was first taken till you delivered him up to the commander of the forces?—For the time he was put into the guard-house I did, for a few minutes.

You said you did not see the pike, but heard it fall; how do you know it fell from him?—From the place in which it fell.

Was there any other person near him?—No one but Watt.

Was there any other pikeman near him?—No nearer than the rest of the party before us in front.

James Waddle North cross-examined by *Mr. Mac Nally*.

Do you recollect whether your party chal-

lenged, as you came up near where you say the prisoner was, by asking "Who comes there?"—No farther than Watt desiring the man to stop.

Was the answer given "a friend?"—I heard no such answer.

Either might have happened without your hearing it on account of the noise?—I heard what Watt said, and no answer could be given any way audible without my hearing it.

He struggled hard, you say?—He did.

That was to get out of custody?—No doubt.

Do you not think that a man armed as you describe the prisoner, would rather have made battle than suffer himself to be taken?—I think it would have been madness to have made resistance against so many as we were.

You said there were many in front of you?—No, but that he was out at a distance from them.

Do you not think a man would rather make battle, where there were many others along with him, than struggle by himself when in custody?—No, because if he killed or hurt any man, the comrade would immediately revenge him and kill the man.

If in that struggle, when unarmed, his strength had effected his escape from you, would you not kill him after?—If we could we would, but certainly he did struggle to get away.

The eye of a soldier, when he discharges his piece, is not very free from a shock from the piece?—It it be in the proper position it does not affect him.

Is the observation true, that the flash of the pan, so far from aiding the sight, dazzles it?—Sometimes it may dazzle the eye, but it throws light upon the objects around him.

Jury.—Did you fire?—I fired one round at the place the bottle was thrown from.

Was that before or after you saw the prisoner?—It was after I saw him.

Extracts from the proclamation were read,
Vide Kearney's case, p. 723.

And the case closed on the part of the crown.

Note.—When the case for the prosecution was closed, and Mr. Mac Nally rose on behalf of the prisoner, the Court intimated to him, that it was expected he would confine himself to the statement of the prisoner's case, and after the evidence for the prisoner was closed, then his second counsel might observe upon the whole of the evidence. But if the first counsel in stating the case thought proper to observe upon the evidence, they would not permit the second counsel to do the same.

DEFENCE.

Mr. Mac Nally.—My Lords and Gentlemen of the Jury: The statement which I have to

lay before you must be very concise indeed. I shall not make any observation upon the preliminary evidence, given by those brave men who took an active part in suppressing the insurrection, because that evidence only goes to establish the existence of that insurrection, and the existence of a conspiracy by persons, to the grand inquest unknown, existing on, and previous to, the 23rd of July, and charged generally in the indictment.—I shall not, I say, take the slightest notice of that introductory evidence of insurrection and conspiracy, because it does not in any degree affect my client, who by that evidence is neither identified as being present, nor in any other manner implicated.

The bench have been pleased to intimate that, in their opinion, the counsel who states the case for a prisoner ought not to observe upon the evidence given by the crown, or if he does, the other counsel will be precluded from observing thereon. The rule is new to me; yet so far as the nature of the case will admit, I will endeavour to obey its injunction. I will not contest the propriety of the restriction, well knowing that my learned coadjutor is amply competent to render our client, whom we are assigned to advise, and to defend, every possible and efficient assistance that can result from learning and talent.—The Court, I say, having intimated their opinion, upon the irregularity of my speaking to evidence, where there is a second counsel engaged, I take it that the rule is legally and properly settled—and whatever doubt may exist in my breast upon the point, or whatever difficulty I may have to contend with, it would be presumptuous and extremely wrong in me, now to promulge a controversial word upon the subject.

Gentlemen of the jury, I admit that you have a complete and unequivocal series of facts proved before you, by men of undoubted and unquestioned credence, that a rebellion existed in this metropolis upon the 23rd day of July last. And, gentlemen, I also acknowledge, that from the printed paper, entitled a Proclamation, and proved to be found in the dépôt of arms and ammunition in Mass-lane, from which a paragraph was read, you have complete evidence to show, that the object of the principal conspirators was, to establish a republic in Ireland, to be introduced by persons styling themselves "the Provisional Government."—Who were the members of that intended Provisional Government may be a question of curiosity: perhaps the records of this court may give information of those respectable legislators. Are they among the number of the conspirators convicted?—If so, one of those provisional governors, who has undertaken to put down the present constitution and set up a republic in Ireland, was a dealer in skins—another a slater—and a third a buyer and vender of cast-clothes—but the ridicule appropriate to this intended republic and its members, has been already applied by

the ablest mind that ever brought forward that test of truth (Mr. Curran*).—I shall therefore only say, joining with my friend in sentiment and affection, to the peasant and the mechanic, that I trust in God the examples, which have been recently made, have had the proper effect, and will call the minds of those who have escaped from folly to common-sense, and convince them that the most efficacious mode by which they can serve their country and deserve the honorable title of patriots is, by returning to the enjoyment of peace, and to the sweets of industry.

Gentlemen, I am counsel for the prisoner, and assigned by the Court to defend him, not as in common cases of felony, where my endeavours would be restricted to matters of law, but with a privilege to controvert and to animadvert upon every matter of fact given in evidence against him, or in his favour.—Thus situated and thus assigned, while I act as an advocate for him; I feel myself also the servant of the law and of the constitution, and as such at liberty to censure, with the severest reprobation and abhorrence that rebellion, in which, I trust, I shall convince you he had no concern, and also my approbation, reverence, and love to that constitution under which we live.—Gentlemen, surely no other proof of its excellence over all others need be adduced, than the freedom I exercise in addressing you now, and thereby showing the privilege with which the law invests the prisoner, to select his own counsel for the defence of his cause, to state his case, to controvert the accusation against him, and to observe and to argue upon the evidence produced, and upon the credit of the witnesses brought forward, and sworn and examined on the part of the crown.

I fear I tire, and I promised to be concise.—Gentlemen the case of my client as to matter of fact is simply this:—He has been called upon to account for the occasion which brought him to Dublin from his place of usual residence. It is not on every occasion that a man can call together retrospective matter with such accuracy as to show the occasion of an anterior transaction, particularly where no notice has been given that such an account will be required; he is called upon so to do upon the spur of the occasion, and he is ready so to do, though neither time nor notice was given him for preparation to rebut that fact.—He stands prepared to satisfy you, gentlemen of the jury, on that point, because common-sense dictated to him, that being the inhabitant of a town only sixteen miles from Dublin, it would be necessary to his defence and acquittal not only to show the cause of his being in Dublin, at the time of the insurrection, but more particularly, why he was in Thomas-street, where that insurrection broke out. He will evince, and I am sure to your satisfaction, and, as I am instructed, by witnesses of unimpeachable credit, that his ap-

pearance in this city at that time was perfectly innocent, and his business clearly unconnected with rebellion.

This evidence, gentlemen, in conjunction with evidence of excellent character, will demand and meet your verdict of acquittal, and rescue the life and the property and the fame of the prisoner from the terrific and severe consequences of the accusation exhibited against him.—He has no pretensions to rank or situation, he has moved only in the narrow circle of humble life. The prisoner, gentlemen, is a baker, and he will satisfy you, that some time previous to the rebellion, in consequence of a failure of business in the county of Kildare, he came to Dublin, and determined on taking a house in Rings-end, for the purpose of carrying on trade in that village, and thereby earning an honest livelihood for himself and family. But it may be asked, what brought him to Thomas-street at so critical a time? I answer, as instructed, a brother-in-law of his dwelt there, and, while seeking for a proper habitation, he resided with him. It appears that on the 30th of July he was at Rings-end, making arrangements for his business. Upon returning to Thomas-street to the house of his brother-in-law, on the 23rd, he was taken into custody. Gentlemen, you all must recollect the 23rd of July, and I call upon the recollection of many of you who resided at a distance from the scene of horror, acted that night, whether you were not ignorant of the insurrection till you heard the drum beat to arms, and that alarm did not commence till the insurgents were put down.—Many persons in the vicinity of the city were ignorant of the rising till the subsequent morning. It was not known in Leeson-street, nor Harcourt-street, nor in Gardiner's-row till after those miscreants, who perpetrated the atrocities of the evening, had been defeated by a handful of the king's troops and had fled. Then, gentlemen, apply these circumstances to the prisoner's case; consider whether this man at the bar might not have come from Rings-end, after examining the house preparing there for his use, for the sole purpose of retiring quietly to his lodging and his bed. Consider whether he might not have repaired to Thomas-street utterly ignorant of the disturbance which had commenced and raged in his absence, and which at the time of his arrival there had nearly subsided.

But another point is urged against him, which demands observation:—It is said he struggled when made prisoner. I admit he did; but would not an innocent man struggle when suddenly seized, and in the dark? And does it not appear that he received two or three strokes, violent ones no doubt, from the soldiers who took him into custody. He struggled under those blows, he struggled to extricate himself, and to get free from those persons who inflicted them—and was not that natural?—The human creature will not submit to outrage; a blow might be followed by the

* See the preceding case.

thrust of a bayonet, or of a pike, he could not tell which; the night was dark, and he was ignorant whether those who seized him were soldiers or banditti. Gentlemen, a coward smarting under blows, and fearing immediate death, will be roused into self-defence. We will either make resistance, or an effort to escape. Such was the struggle upon which so much stress has been laid to convict the prisoner of high treason.—An overt-act of treason clearly it is not; neither is it evidence to support an overt-act, but merely a circumstance, a weak circumstance, scarcely worthy your attention: or if you do consider it as a fact, consider at the same time the prisoner's situation, and you must entertain a doubt as to the motive of his exertions.

As to the witnesses produced for the purpose of identifying the prisoner as one of the acting conspirators—as one of those who were levying war against the Crown by opposing the king's troops, I do not impeach the testimony of the soldiers, by imputing to them wilful perjury—I see no motive for their swearing falsely; on the contrary, I cannot say they do not deserve credit as to many of the facts they have sworn to. But in a scene of such darkness and confusion, without impeaching their integrity, I may fairly advance the probability of their having been mistaken—and, upon discrimination of their evidence, taking it in a comparative view, you will find they have been inconsistent. What is the evidence? One soldier says, “the prisoner was taken and he struggled, but he had no pike.” The other soldier says, “I heard a pike fall;” but he candidly admitted he did not see the weapon;—then observe, there is no proof from either of those men, that the prisoner had a pike, and a jury are not to conclude guilt from inferences. Again, I do say, one of those soldiers swore rashly, and inconsiderate swearing goes strongly to create doubt in the mind of the hearer; I repeat it, I do not charge the man with wilful want of veracity, but with rashness, resulting perhaps from too much zeal. He swears he knew the prisoner by the flashes of the pan when the soldiers fired. Does that evidence deserve implicit credence? I say the flash from the pans could not have assisted the sight of the soldier, so as to enable him to discern the features of a stranger with sufficient accuracy to identify his person upon oath. It has been known that the light of the sun has deceived men of great sense and sagacity; it so happened a few years ago in England. Sir Thomas Davenport, an eminent English barrister, a gentleman of acute mind, and strong understanding, swore positively to the persons of two men, whom he charged with robbing him and his lady in the open day-light. He was positive, and the hour he stated was about two o'clock in the afternoon. But it was proved, by the most conclusive evidence, that the men on trial were, at the time of the robbery, attending a company at dinner, one as master of the ta-

vern, the other as waiter, at so remote a distance from where sir Thomas was robbed, that the thing was impossible. The consequence was, the men were acquitted; and some time after the robbers were taken, and the articles taken from sir Thomas and his lady found upon them. Sir Thomas, on seeing these last men, candidly acknowledged his mistake—and, as I have heard, gave a recompense to the persons he prosecuted, and who narrowly escaped conviction.

I obtrude this anecdote on your consideration, gentlemen of the jury, to show that evidence of identity, however positive the witness may be, or however credible, ought to be received with the most delicate caution. When a man discharges a gun with the lock close to his eye, in my humble opinion, so far from the flash assisting his sight, it would dazzle and render the object before him confused. The flash may illumine for an instant the figure of a man, and make it perceptible, if near, but cannot distinguish his features with sufficient accuracy to enable the party discharging the piece to swear to them—the flash throws a light on the object, but that light has no continuance, it is momentary, and there is not time for the mind to be impressed by a certain idea of any object seen through such a medium.

Consider, gentlemen, all the circumstances—the night was dark, every shot was increasing the smoke collecting about them, and the smoke increased the darkness. The bravest man is not without feeling on such occasions; when the battle rages, even the soldier looks more to himself than to others. I ask you, then, how is it possible for one man to swear to the identity of another man on such an occasion?

I shall trouble you no farther on the evidence—I fear I have involuntarily gone too far, and I have to thank the Court for permitting me after the intimation they had given. I have now to submit to you the character which I am instructed will be given in the prisoner's favour—and the impression which it ought to make on your minds. I will point out to you the efficacy of a good character, and in doing so I will adopt the words of lord chief justice Eyre on the trials for treason in 1794. That learned and humane judge expresses his sentiments, as to the weight which character should have in the minds of a jury, thus:—“An affectionate and warm evidence of character, when collected together, should make a strong impression in favour of a prisoner; and when those who give such character in evidence are entitled to credit, their testimony should have great weight with the jury.”

That kind of character the prisoner will produce and support by such witnesses, as must have credit with you;—and here I must observe upon the species of character, which

has been required on the preceding trials. It has been said a character for honesty is to have no effect—that a good father—an honest dealer may be a rebel and therefore the character that should be given is, that the prisoner is a loyal man; but how is such evidence to be obtained where the loyalty of a man has never been spoken of, where his politics have never been promulgated or heard of? Why, I know one half of the present jury, and I should be competent, sanctioned by my own knowledge of their general characters, to swear I consider them honest, industrious, peaceable men—but as to their loyalty, I know nothing, for I never heard it questioned, and am unacquainted with their political sentiments—those sentiments may be the secrets of their hearts, and concerning which I have never spoken to any of them. God forbid then, that honesty and peaceable conduct should not contribute to a man's reputation as a good subject; surely such demeanor tends to show that the man would not be disloyal, because the consequence of disloyalty would be the loss of all his industry acquired—the confiscation of all that property which his labour had collected. I will read to this point, a passage from a trial in England which will show that I lay down the right and true rule. We have all heard of chief justice Scroggs, as cruel a prerogative judge as ever sat upon the bench. I will read what he said in regard to character in a prerogative case, a case too where life was not at stake, for in favour of life no species of character has ever been refused. The case is that of Benjamin Harris, who was tried in the 32nd year of Charles 2nd at Guild-hall, London, on an indictment for a seditious libel. Scroggs, chief justice, admitted the prisoner to call a witness to his character who deposed, he knew him to be a fair conditioned quiet and peaceable man, and that he was so reputed among his neighbours, and never was reputed to scandalize the king or his government. 2 State trials, 1038*.

Conformably to this authority, we will show by witnesses of credit, that the prisoner now on trial is a quiet man, has been always so considered by his neighbours, and has never been reputed to be a disloyal man; it will not injure the defence, I trust, that we add, he has always been esteemed an honest man.

Gentlemen of the jury, this is all I have to lay before you on behalf of my client—and I rest satisfied, that as you will act under the direction of the Court in point of law; so in considering the facts given to you in evidence, you will honestly and without prejudice execute your peculiar right in deciding on that evidence; so as to satisfy your consciences by acquitting him, if a doubt presses upon your minds—clear I am, from my knowledge of most of you, that your verdict will be such as just and humane men ought

to find, such as the public must approve, and such as will even satisfy the prisoner.

Jeremiah Mac Shee sworn.—Examined by Mr. Ball.

Where do you live?—I have a house at Rings-end.

Who occupied it lately?—One James Carroll.

When did he leave it?—Six months ago.

Have you set it?—I was going to set it.

To whom?—To James Byrne, the prisoner.

What business was he about to follow there?—As I understood from himself, it was for the baking business.

Did you see him there?—I saw him at the Pigeon-house three or four days before the breaking-out.

Was that the first time you saw him?—It was.

What agreement did you make with him?—We did not come upon a settlement, he was to call again to make the agreement; I was ill at that time.

You have some appointment?—I belong to the artillery at the Pigeon-house.

Jeremiah Mac Shee cross-examined by Mr. Solicitor General.

What situation do you hold in the artillery?—A gunner, on the pension list.

There is a good deal of cannon at the Pigeon-house?—There is.

You never saw the prisoner before that day?—No, and I was lying in my bed very ill of a sprained leg.

What brought him there?—To ask me to rent the house to him; he got admission into the place, by saying he wanted to take this house from me.

You never saw him before?—No.

Nor since?—No.

How long did he continue there?—I cannot say.

He might have continued there to walk about?—He might: I told him if he wanted to see the house, he might apply to Mr. Corcoran, from whom I rented it.

Court.—Did you advertise the house in any way?—I did: there were bills upon the house.

Mr. Solicitor General.—Did you refer to any person?—I did, to Mr. Corcoran.

Where does he live?—In Rings-end.

Was that stated upon the bill?—It was.

But the prisoner applied to you?—He did.

Did you ever hear that any attack was meditated upon the artillery at the Pigeon-house?—I did.

Did you hear that the rebels intended to attack Island-bridge?—I did.

There are cannon there?—Yes.

In order to make an attack upon the Pigeon-house, do you not think it would be useful to see the place?—I cannot say that.

Was every person admitted among the

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cannon?—Not where there was cannon, but upon the wall down to the light-house.

Your place is among the guns?—It is, close to the battery.

How long he remained among the guns, you cannot tell?—No.

You and the prisoner did not stay much together?—No.

You drank together?—We did; three of us had half a gallon of porter.

You never saw the man before?—No.

There was another man in company?—Yes, one Kearney.

He was a stranger to you?—He was.

They came together?—They did.

And went away together?—Yes.

He never came back to inquire about the house?—No.

The house which you had to set, had been a public house?—It was, and he said he wanted to build an oven in the cellar of it.

Where did he say he came from?—He said from Thomas-street.

Did he say he came from Naas?—No, I think he said he came from Thomas-street.

Jury.—Did you ever live in that house in Rings-end?—No.

Have you any lease of it?—I have.

In the bill on the house, was there any reference to yourself, either as to terms or otherwise?—I wrote the bill myself; I desired application to be made to Corcoran.

Did Corcoran send the man to you?—He did not.

Did you refer the man back to Corcoran?—I desired them to go to Corcoran, to let them see the house, as Corcoran had the key.

James Kearney sworn.—Examined by Mr. Mac Nally.

Do you know the prisoner at the bar?—do.

Do you know the last witness?—I do.

Were you at the residence of the last witness with the prisoner?—I was.

Upon what day?—On Thursday.

In what month?—Three days before the disturbance in Thomas-street.

What occasion had you to go with the prisoner?—When Mr. Byrne came to town he called to me at Rings-end, and inquired of me, if I knew any place at Rings-end, or about the place, that would answer for public business for his wife, and that he would build an oven in; I told him of a house in Rings-end, with a bill upon it, which I thought would answer; he said after some time when the business would go on, he would knock up an oven, and I would be a partner.

What business were you?—A baker.

A master, or journeyman?—A master formerly; but have dropped it, not making any thing of it.

Of what business is the prisoner?—A baker.

How long have you known him?—Thirty years. I worked journey work for him. We

went to Shee's and had some porter; he was lame from an accident of the mail-coach going over his leg, and we returned to my house, where Mr. Byrne slept.

Did Byrne go to see the house?—He did not.

He slept at your house?—He did, two nights, Thursday and Friday.

Was he there on Saturday?—He was.

How long did he stay?—Till two o'clock, we were waiting for Shee, who was to come down to show the house, but he did not come.

Did Corcoran show the house?—The top-room belonged to one Brennan, and Corcoran had the setting of it; Brennan said a tailor, next door, had offered money for it.

Can you tell whether it was at a sufficient price?—I cannot tell.

At what time did the prisoner leave Rings-end on Saturday?—After two, drawing to three.

Where did he go to?—To my house, No. 13, Townsend-street.

Were you with him?—Yes.

How long did he stay there?—Why, by the time we parted at the new street, it was half-past nine o'clock.

What new street?—Near the New-bridge.

Then you parted with him?—Yes; he said me be intended to go over the water, to see if Mr. Kennedy had come from Tullamore.

Is Mr. Kennedy a corn-factor in Abbey-street?—Yes.

James Kearney cross-examined by Mr. Plunket.

You have known the prisoner a long time?—Yes, thirty years.

Where did he live?—First in Abbey-street.

How long was it since you had seen him in Dublin before that day?—I cannot tell.

Did he not live in Naas?—He did.

When did he come from Naas?—The Tuesday before.

Did you see him before Thursday?—No.

Where did he lodge?—At his brother-in-law's, one Gilligan, in Thomas-street.

In what part of the street is that house?—Near the Butter-crane.

He lodged there on Tuesday-night?—He did.

Where on Wednesday night?—I suppose in the same place.

And where on Thursday and Friday?—At my place.

Are there any of the king's stores in the neighbourhood of Townsend-street?—There are.

How far from your place?—Not far.

At what time of the day did he come to you on Tuesday?—About two o'clock.

You were not at Rings-end at that time?—I was working there.

How did he know it?—He might easily know, because I worked there long; he might hear it at my house.

Were you surprised at seeing him?—No,

because I saw him before, looking for a house of the kind, at the same place, or the Rock.

How long before?—About three months.

Had he been following the baking-business in Naas in that time?—No.

What did he follow?—He lived with his brother, Peter, who lived with Mr. Montgomery.

You went immediately with the prisoner?—I did, as soon as I drew a batch of bread.

You went down to Mac Shee's?—Yes.

It was then near three o'clock?—It was.

Did you return home after leaving him there?—No, we returned together. We stopped at Lynch's, my employer, who disputed with me, because I was getting this house for Byrne.

But then you returned to Townsend-street?—Yes, and stripped and went to bed.

So that it was bed-time when you returned to town?—It was late.

What hour was it?—About nine.

It was two o'clock when Byrne went to you?—Yes.

Then you arrived at Mac Shee's about half-past three, and returned home at nine, so that you must have delayed four hours with the artillery?—I do not say that; I was there three-quarters of an hour.

How do you account for four hours, after allowing sufficient time for walking?—I went to Mr. Toole's and got some bread and cheese.

But how do you explain the four hours? Were you not at the Pigeon-house looking at the stores and cannon?—I never did; I did not advance the breadth of my nail.

You inquired particularly the terms of the house?—We did.

What was the rent?—Eighteen pounds a year, and ten pounds fine.

They disagreed?—Yes; Byrne referred it to me.

Then why did not you conclude the bargain?—Because we did not look at the house.

Why not?—I did know Carceran.

Who is he?—He belongs to the revenue.

Has not he a house there?—He sold the good-will of it.

The prisoner slept with you on Thursday night?—Yes.

You went back on Friday?—Yes.

You saw the house then?—Yes.

Then why not conclude the agreement at that time?—Because Mac Shee's wife was to call upon me, and she did not; she was taking care of his sore leg; it was injured by the mail-coach, as he said.

Were you all the day of Friday with him?—I was there; he stayed the whole day with me.

Did he sleep with you that night?—He did.

On Saturday morning, I suppose, you went to Ringsend again?—Yes.

You did not go again to Mac Shee's?—No, we were looking at another house.

The prisoner, Byrne, had not gone that morning to see Gilligan?—No.

What time did you leave Ringsend on Saturday?—About two.

What time did you leave him in the evening?—I did not leave him at all.

You did not walk to Thomas-street?—I did not go there at all.

At what time did you and Byrne separate?—About half past nine.

Where?—At the new street, between the college and the bridge.

Why did he not sleep with you that night?—He said, he wanted to see Mr. Kennedy; and he said he would go to his brother-in-law's, as he wanted to be off in the packet next morning.

That was to go home to Naas?—Yes.

At six in the morning?—Yes.

Had you fixed any thing finally about the house on Saturday?—What fixing could I make about it?

Were you determined to take it?—Yes; I told the man this morning I would take it.

Did you tell him so on Saturday?—How could I, when I did not see any person, Byrne said he would send me a letter on Tuesday to take the house.

Why did he not take it while he was in town?—Because he did not see it, and he depended upon me to look at it, and if I liked it, to take it.

He never saw the house?—No, he never did.

Either on Thursday or Friday?—No.

What is your name?—Kearney.

Otherwise Carney?—I do not know, it is Kearney one way, and Carney another.

Have you any friend or relation?—I have both.

Have you lost any of them?—Yes, God took them.

Was any taken lately?—No.

What countrymen are you?—County Kildare.

You heard of no disturbance on Saturday, the 28rd of July?—No, not a word till the next day.

When on the next day?—Between ten and eleven, when I got up. I worked very hard, and I sleep generally on Sunday morning; when a man is twenty hours on foot, he sleeps a good deal afterwards.

Had you worked that Saturday?—No, I did not work at all that day; but from the habit of working hard upon Saturday, I generally sleep upon Sunday; and having to go to work early the next morning, I slept upon that morning.

Did you work any that night between ten and eleven o'clock?—No.

When you heard of the disturbance in Thomas-street, did you go to inquire whether your friend had gone in the packet?—I did not; I thought there was no danger of an innocent fellow at any time.

Why did he go without seeing Mr. Kennedy?—How can I tell?

Did he not tell you?—No; not whether he was come home or not.

Did he go to Mr. Kennedy's?—I understood he did, and the maid answered from the area, that he did not come home.

Who is she?—The servant-maid.

Did you know her?—Yes.

Did you call there since?—No.

Is she there still?—I believe so, barring she is discharged.

Have you a brother?—I have.

Where?—In Dublin; he is a cooper by trade, and worked in Marlborough-street.

When did you see him last?—I did not see him this fortnight.

Where is he now?—I suppose there.

Can you tell the name of the person he works with?—I cannot.

Have you seen your brother since the 20th of July?—I have.

How long since?—Eight or nine days ago.

I thought you said you did not see him for a fortnight?—What do you make eight or nine days, but a fortnight?

You cannot tell the name of the employer?—No.

Did you see many friends from Kildare?—Not a man since these ten years.

Did you hear of Edward Kearney?—I heard people speak of him without there.

Did you see him?—I saw his dead body, but I did not know whether his name was Kearney or not.

Was he a relation of yours or not?—He is not.

Was he?—No, nor never will.

Was there any charge made against you?—No.

Were you ever in custody?—I was taken by some gentlemen, being out after nine o'clock; I went to pay money at Rings-end.

Did you say you were a baker?—I was tried before alderman Rose, and I told him the truth.

Did you say you was engaged about taking a house?—No, I had no occasion; I went to pay money, and there is money due to me.

Jury.—When the prisoner called upon you at Rings-end, did he say he had been at your place in Townsend-street?—No.

Did you go to Corcoran's or to Shee's first?—I went to Shee's and not to Corcoran's.

Was there any person in the house?—No, barring a mouse, or some such devil.

[Here Mr. Courtney, a gentleman, who happened to be in court, addressed the judges, and requested the witness might be detained until he should give some evidence against him.—Mr. Courtney was desired to come upon the table, and he was sworn.]

Peter Rutledge Courtney, merchant, examined by *Mr. Attorney General*.

Did you observe the last witness during the time he was giving his testimony?—I did.

Did you ever see him before?—I did.

Upon what occasion?—I was upon guard

at one of the bridges, the name of which I forget, but it is between the Black Rock road and the draw-bridge, near Mount-street.

It is near the dock?—It is.

Upon what night?—I do not well recollect, but it was early after the breaking out of the rebellion, about three weeks ago.

Had you any intercourse with the witness upon that occasion?—I had; he and two other men came down endeavouring to pass our guard, they were stopped by the sentry and sent to our guard-room; the witness said, he thought it a great hardship to be taken so early and prevented from going into town; it was between nine and ten o'clock, as the first sentry is not placed till nine. I was corporal of the guard, and asked him, as well as some others, where he was going. He said he was going home, that he had been at the Black Rock, and would not be let pass with some other persons who were in a jingle, and were stopped by another guard at Baggot-street bridge. We kept him in the guard-room till morning, and finding no charge against him, we desired him to be more careful, and not to be out so late.

Where did he say he lived?—He said he lived in Marlborough-street; and, when going away, he did not go towards Marlborough-street, but went back again towards the Rock.

Court.—Did you ever see the man before?—No, my lord, or since, till this day.

Peter Rutledge Courtney cross-examined by *Mr. Ball*.

This was three weeks ago?—Yes.

You never saw the man before?—No.

Do you not think you might mistake one brother for another?—I might, but do not think I would mistake their story.

Have you a brother?—I have two.

Were you ever mistaken for your brother?—I was, by you.

You remember, that I took you once under the arm and walked through the street, mistaking you for your brother?—I do.

James Kennedy again examined by *Mr. Plunket*.

Were you ever taken up but the one time you mentioned?—No.

That you say was on Monday last?—Yes.

Was any person with you?—Yes, there was a drunken waiter taken up.

What was the account you gave of yourself?—That I was paying money at Rings-end, and was returning home.

To Thomas-street?—No, but to Duke-street, where I worked.

Did you say, that you were taking a house?—No, how could I, I was not taking a house at that time.

But did you say so to the guard?—No, I did not.

William Rotheram sworn.—Examined for the Crown, by the *Attorney General*.

Do you belong to the yeomanry forces?—I

am first serjeant of the 5th company of the Merchant's Corps.

Were you upon guard last Monday night?—I was serjeant of the guard last Monday night at the Canal-bridge, upon the Artichoke road.

Did you see Kearney, the witness, there?—I saw him in the guard-house.

Did you hear the account he gave of himself here?—I did.

Was it correct according to the account he gave at the guard-house?—It was not; the sentry at the gate took this man, who was drunk, into custody; the serjeant being called out, I went and interrogated the man upon what business he was out at that hour; he said he went to take a house for a friend at Rings-end and in making the bargain they drank a little extraordinary and were out late.

James Kearney examined by Mr. Plunket.

Is what Mr. Rotheram has said true or false?—I cannot say whether it is or not; I said no such thing.

William Rotheram cross-examined by Mr. Mac Nally.

Did you hear Kearney, the witness, cross-examined?—I did.

Did you hear him say that even so late as this day the bargain about the house is not concluded?—I did.

Did you take any memorandum of the charge against him that night?—No; I sent him to St. Andrew's watch-house with another prisoner.

Peter Butler sworn.—Examined for the prisoner by Mr. Ball.

Where do you live?—In Abbey-street.

What is your business?—A baker.

Do you know Mr. Kennedy?—I do.

Does he live in Abbey-street?—He does.

Whom do you work for?—I carry on business for myself.

What business does Mr. Kennedy follow?—He bakes biscuits for government.

Did you ever see the prisoner at Mr. Kennedy's house?—Often.

How near do you live to Mr. Kennedy?—Almost opposite his door.

Did you see the prisoner the night of the 23rd of July?—I did.

Where?—At my own house.

At what hour did you first see him that evening?—Very near nine.

When did he leave you?—About half past ten: he would stay till morning if I could drink with him; I was not well, and I said to him, it was a shame for him to stay so long in town. He said he had been taking a house in Rings-end with Kearney and had been drinking with him; I said, it was a shame for him to keep such company; he said the man lived in the place, and he was taking his assistance.

Where did the prisoner lodge?—At Gilligan's house in Thomas-street.

Whereabouts?—In the middle of the street, up beyond Dirty-lane, near James's-gate.

Peter Butler cross-examined by Mr. Townsend.

Are you sure that Gilligan's house is near James's-gate?—I am.

The prisoner was very intimate with you?—He lived at my house.

When?—Five years ago.

Was he with you shortly before this night?—Not a foot, only that time he came to look for Mr. Kennedy, as he told me.

You drank with him that night?—Yes, we had some porter; he stayed with me some time about three quarters of an hour, the girl was washing the parlour and we agreed to go to another place, after he had been half an hour at my house, and then we went to another place and had some porter, he stayed till I am sure it was past ten o'clock.

Perhaps it was eleven?—No it was not.

What night was it?—Saturday night.

Was not his lodging at Townsend-street?—He slept there, as I understood.

And lived with Kearney?—I believe so; nobody would treat him as that man did.

Then after ten o'clock he was to go to Thomas-street after sleeping two nights at another place?—He would have stayed with me all night; I said it was a shame for him to be so late; he said the hostler would let him in.

You say, he would have stayed longer with you?—He would; he wanted me to go to another place to drink more; but I pushed him away and said he was an unfortunate fellow.

How far is Gilligan's house from Dirty-lane?—As far as from this to Boot-lane.

Court.—Upon what side of the street as you go to James's-gate?—The left side as you go up; it is on the same side as Mr. Guinness's brewery.

Did the prisoner ever work with you?—Never.

John Graham sworn.—Examined by Mr. Mac Nally.

Where do you live?—In Bishop-street.

Do you know the prisoner?—I do.

How long?—Ten or twelve years.

What is his general character?—When I had dealings with him, I thought him an honest man, but rather an indolent man.

Have you continued to know him since you dealt with him?—Not for some years past.

Did you ever hear his loyalty impeached?—Never.

John Graham cross-examined by Mr. Solicitor General.

How long is it since you ceased to know the prisoner?—I know very little about him these three or four years past.

You thought him an indolent man?—Yes. Not likely to make money by industry?—No, not very industrious.

Allan Rutherford sworn.—Examined by Mr. Ball.

Are you acquainted with the prisoner?—We were school fellows together, and I have known him these last four years in Naas.

Did you ever hear his loyalty impeached?—Not till this time.

Allan Rutherford cross-examined by Mr. Mayne.

You live near Naas?—Yes.

Did you live there in the year 1798?—I was forced in there by the rebel party.

Has the prisoner any friends in that country?—He has a brother in Naas.

Do you know the Byrne, who lives at the ten-mile stone?—Yes.

Is he a relation of the prisoner?—Not to my knowledge.

Did not many people leave Naas on Friday the 23rd of July?—I went to Naas that day.

For what purpose?—To give information to the gentlemen of this rising, and I gave information to Colonel Wolfe.

Many people left the town?—I cannot tell how many; there were a good many certainly.

Was it not the general reputation of the country that they went to take Dublin?—It was, but the prisoner went to town some days before.

Did any persons from that part of the country suffer upon the night of the 23rd?—Some were killed, some were wounded, and some taken.

[Here the evidence on behalf of the prisoner closed.]

Felix Brady, esq. again called and examined by the Court.

Be as accurate as you can as to the time the action took place in Thomas-street?—To the best of my recollection, it could not be more than half past nine, and as far as I recollect we were returning from James's-street by ten o'clock and rather before it.

Jury.—Are you positive that the action was over at half past ten?—I am positive of that.

[The evidence closed on both sides, and the Court seemed to be of opinion, that Mr. Ball was not entitled (in strictness) to observe upon the evidence, as Mr. Mac Nally had made observations upon it; however it was agreed that Mr. Ball should be heard upon this occasion, if he wished to address the jury.]

Mr. Ball.—My Lord, and Gentlemen of the Jury; I have a more oppressive feeling in rising to address you upon this case, than has ever attended me upon any other occasion, though even in itself of equal importance, from the nature of the evidence that has been given—a series of evidence demanding a most minute examination and comparison of facts and circumstances, and which in a great measure leaves the fate of the prisoner

to be determined by the effect of the observations that his counsel has to make upon them, and the degree of force and perspicuity with which he shall be able to communicate to your breasts the impressions and conclusions of his own mind.

Gentlemen, one principal and leading feature in the defence of the prisoner is precisely that which was anticipated and challenged by Mr. Attorney General in his statement. He, supposing that the town of Naas was, as it were, the hive from whence the swarm of insurgents, on the fatal night of the 23rd of July, had been supplied, and knowing that the prisoner was an inhabitant of that town, thought that alone was some reason to involve him in suspicion—and I should be ready to admit that that circumstance, especially when coupled with the fact of his being on the fatal ground where the business was going on, would naturally create a strong suspicion of guilt, unless he should fully, completely and satisfactorily account for his being in Dublin on that night for some defined and innocent purpose, and under circumstances inconsistent with his having any participation in the insurrection. I do confess, that while the attorney-general stated these circumstances as the ground upon which the prisoner was so completely prepared to meet the challenge of the attorney-general, that I entertained no manner of doubt, that if the case stated to me in my brief should be proved by witnesses whom you would believe, you must acquit the prisoner; that was my impression, and upon that ground I anticipated your verdict of acquittal; and upon the case made out in evidence for the prisoner I now demand that verdict.

The learned counsel who preceded me, having made many strong and pertinent observations upon the evidence for the crown, the Court seemed to be of opinion that in permitting me to speak after him, they granted an indulgence, which was not intended by the legislature, when it gave to persons accused of high-treason the privilege of defending themselves by counsel; I shall therefore compress into as narrow a compass as possible my observations on that part of the evidence (namely the evidence for the crown) which has been already spoken to on behalf of the prisoner.

There is not a single fact of any sort imputed to the prisoner by the witnesses for the prosecution, nor any circumstance in the smallest degree affecting him, except the one circumstance of the pike; and out of a guard of fifty soldiers and their officer, not one person has been able to say any thing as to that fact, except one single soldier; of the evidence of that single soldier, and the circumstances accompanying the facts which he has stated, I entreat your cool and cautious investigation;—consider the position of the several parties concerned in the transaction—the soldiers were proceeding in an easterly

direction, the rebels were before them, the first division of the military were advanced five or six paces before the second, the prisoner was discovered on a line with the second division, his face towards the west—the night was extremely dark—there was no ray of light to exhibit any object except that which proceeded from the fire of the musquetry. A volley was fired by the front division, and by the light of that volley, fired behind the prisoner's back and five or six paces from him the soldier affects to say, that he not only saw the pike fall from the prisoner's hand, but that he also saw and distinguished his face, and it is in evidence that the wind was blowing from the east, and therefore by throwing the smoke back upon the party must have materially increased the obscurity and darkness of the scene.

I do not wish to argue on the intentional truth or falsehood of the evidence of the soldier; it is possible he may have intended to deceive, or he may have intended to give just and true evidence according to his view and conception of the facts—which at best must be confused, if not absolutely doubtful and uncertain—but you, gentlemen, will consider whether it is possible, that the light from muskets fired from the west, when the wind was easterly, could show the face of a man at such a distance, and in such a relative position—back to back with the soldiers who fired. And even though you should think it physically possible, your next consideration will be, whether such a light may not possibly have misled the soldier, and whether with a good intention, he may not state that to you, which he may believe to be true, and yet you may be of opinion, that he could not have such an accurate knowledge of, as to authorize you to take away the life of a fellow-creature—and the more especially as, independent of any case made out by the prisoner, he was stated by the witnesses for the crown to be in a situation not consistent with his being a party in the rebellion. He was not observed, till the first division had passed by five or six paces, when it is said the left hand man saw him upon the flag; and it is alleged, he was in the act of making his escape. Now what is the direction that a man would take in making his escape from such a party?—a volley had been discharged by the first rank—their fire for the moment, at least, was spent;—there were three or four more divisions behind, each at a distance of five or six paces from the rank before them—most of them at least having their arms loaded. The first instinct which would occur to any of the mere animal tribe, much less to a rational man, if his object were to escape, would be, not to rush upon the other divisions, but to avoid them altogether, either to remain with his party, if he were one of the rebels, or to fly in a quite different direction from that which it was admitted he was taking: so that his going in the direction stated, is inconsistent

with the fact of his being joined with the insurgents; for actually it was not probable that any of the rebels would think of effecting their escape by flying past the whole body of the military, where they might have turned their backs and fled from them.

But, gentlemen, if there be any weight in the observations I have made on the evidence against the prisoner, see how strongly these observations are corroborated by the evidence in his behalf. The evidence is, that he left Naas, not only on a lawful occasion (as the attorney-general has called upon him to show) but with an intention to return where none of the rebels could have so intended; that during the whole of the 23rd of July and of several preceding days, he was busily employed upon that business, which had occasioned his journey to Dublin; and that accidental delays in that business had prevented his return home as he had intended; that he came from a remote and undisturbed part of the city, to which he had been brought by the prosecution of his honest and lawful pursuit; that he was advised by his friend to go home to his lodging in Thomas-street, and that to that lodging he did by that advice repair; and to this series of facts proved by his own witnesses, the witnesses for the crown have added, that on his road to that lodging in Thomas-street he was found, not among the rebels who were in front of the soldiery, fighting whilst their hopes of success or courage would enable them to fight, and with the open street behind them, affording a retreat towards the east, if they should find it necessary or advisable to retreat or escape, but at the side of the soldiers, pursuing a westerly direction.

The witnesses on behalf of the prisoner underwent a most severe cross-examination: it has occurred to us all to see prosecutions carried on with zeal and diligence to convict, and great skill and address and uncommon ingenuity exercised to detect a supposed fabricated defence; but the efforts of the present day to confound the witnesses were superior to any thing I have ever heard: however, by the steadiness of those witnesses, the consistency and undeviating uniformity of the testimony they have given, under the strict scrutiny with which they were pressed, the authenticity of the case has been established, and has acquired additional, and I cannot but think, irresistible strength.

Gentlemen, with regard to the times sworn to by the different witnesses, there appears something like a contradiction between the time stated by the witnesses for the prisoner, and that stated by the witnesses for the prosecution. I do think, that is the only part of the evidence upon which it is immediately necessary to argue in support of the evidence for the prisoner; and convinced as I am myself, that the apparent variance between the evidence is not fatal to the credit of the prisoner's witnesses, I have but little doubt that I shall be able to satisfy your minds on that

point.—If two men, upon a certain defined and single fact, shall each give a different account, one certainly must speak intentionally false.—But if the fact be of such a nature as at all rests in conjecture—to which the common usage of mankind has given great and general latitude, such as time, exact precision cannot be expected, and a complete coincidence would be the very circumstance which would induce a reflecting man to suspect that there was some practice to deceive. Mr. Brady says, it was half past ten when the transaction took place in Thomas-street; he speaks upon *belief*, not having resorted to a watch or clock upon the occasion.—He did not calculate by any fact by which the exact time could be ascertained, as by change of sentries, or by reference to any guard regulation—he spoke, and could speak, upon conjecture only. Time, with reference to *facts*, is certain—calculated by itself, and relating only to itself, time is the most vague and uncertain of all things. That one event happened before, after, or cotemporary with another, as the supposed case might be, is a clear certain definite fact—and of two statements, differing as to such a fact, one must be morally false.—The duration or spaces of time not measured by fixed concomitant facts, not ascertained by revolutions of days or seasons, defined by arbitrary portions, by hours and by minutes,—that have nothing to mark their periods, their beginnings, and their endings, must always depend on vague conjecture—are founded only on guess.—Had the subject of difference between the witnesses been the question of light or darkness, or the doubtful glimmer that intervenes between both, the variation must have been imputed to fraud; as it is, it must here be placed to the account of the natural uncertainty of the thing in question.—To remedy this uncertainty in a matter which the convenience of mankind requires to be rendered certain, we have recourse to the mechanical inventions of clocks and watches, but even those are liable to err; I would appeal to your own tried and frequent experience on this subject; I would venture to say, if any of you were called upon to say what the hour is at this moment, you would all mention different hours or parts of hours, and that not one of you would name a time that would not be refuted by looking at his watch, and in your watches would be found perhaps as much variety as in the several guesses you should make yourselves. Nay, even the public clocks of the town do not agree—then see what the supposed contradiction is—he was in company with a poor sickly man, who was anxious to get to his bed, which he could not do till he had first got rid of his friend, that friend too (the prisoner) something intoxicated—the night advanced—the state of his mind calculated to make the time hang heavy and appear long—he is of opinion, it was half past ten o'clock before they separated. He did not say it was

so by his watch—he did not refer to a clock, and, if he had, it might have misled him:—his computation then might also deceive him.—Gentlemen, you cannot but be of opinion, that two men, intending each of them to speak truth, may differ in the hour at which a shot was fired, or any other fact happened, and may, of course, without fraud or crime or moral falsehood, give a different, and one of course innocently a false account.—But what is the inaccuracy here? it is, in my humble judgment, such an inaccuracy as sets up the witness, Butler, and his credit, instead of putting them down.—Does not the prisoner know at what time he was apprehended, as far as the time could be ascertained?—And is he to be charged with suborning a witness to state a fact which is utterly inconsistent with his defence? If the defence were fabricated, the witness would ask, “what time am I to state you were with me?” and that time would be made correspondent with the other circumstances: the witness would have been tutored to state an hour or time that should not be contradicted and refuted by the known and indisputable fact of the prisoner's being in custody at the time he should be said to have parted with the witness. But no such thing is done; no pre-concerted accuracy is resorted to, and you, gentlemen, can best collect the truth from the evidence which has been given. The difference between the witnesses is, that lieutenant Brady states the prisoner to have been arrested at half past ten in Thomas-street; Butler states him to have left Abbey-street at half past ten; this amounts to a variance evidently proportioned to the time the prisoner would occupy in walking from Abbey-street to Thomas-street; twenty minutes would be a large allowance for that purpose; either of the witnesses may easily be mistaken to the amount of twenty minutes; the error may be all on one side, and it is impossible to decide on which; or both parties may be equally mistaken, each to the amount of ten minutes. I have said thus much upon this subject—upon the place where the prisoner was found—on the direction in which his face was turned, and the species of light by which the soldier attempted to justify the accuracy of his eye; because, taking all these circumstances together, it is impossible but they must raise a doubt in your minds. If the prisoner came from Naas for the purpose of the rebellion, would he occupy his time in the innocent and laudable purpose of engaging a house to carry on his business? It was insinuated that he went to examine the stores; it is but insinuation, which you are to reject as proof. It is moreover flatly contradicted: Kearney says, he never looked at the stores; and much effort was used to confound that witness, as to the time he spent with the prisoner on that day, and without allowing credit for five miles which they had to walk. It is alleged, that the walking of those five

miles probably occupied near two hours of the time—the time spent by Kearney in company with the prisoner on that day, appears to the witness's recollection to be spent in the several places at which they sojourned, in the proportions in which he has described them; they were in several houses—in several places—a small mistake in each would amount to the time apparently unaccounted for. Here, again, you will recur to what I have already observed, with respect to the periods of time stated on recollection without reference to clocks, watches, or concomitant facts. The hours upon this occasion were not marked by any changes; the witness had nothing to measure the time with when he was at the Pigeon-house, nor when he was at Rings-end; nor was he at all asked to the time spent in the walk. I have no doubt, that much ingenuity will be exercised to induce you to believe, that no man could be mistaken as to the time beyond a few minutes. I trust the life of my client upon the impossibility of any man being accurate as to time. What is the tenor of Kearney's evidence?—He had worked for the prisoner and knew him well. The prisoner must have inquired at Kearney's house, and was there informed, he worked at Rings-end, to which place he proceeds, and discovering that a house was to be let there, which would suit his trade, he employs two days in this speculation, and he would not return home without seeing Mr. John Kennedy, whom you all know very well. He is accompanied by Kearney as far as Westmoreland-street, on his way to Mr. Kennedy; then he leaves him. After this, the prisoner meets another friend, who lived opposite to the gentleman he was in quest of; he is told that he cannot see Kennedy, and he is recommended to go home. Is there in all this, any thing which a rational, humane, and considerate mind can doubt, not directly contradicted by the opposite evidence, but with much of the evidence for the Crown, consistent with and supporting it? I will not undervalue your understandings and your hearts so much as to believe it possible, but that every thing taken together—the utter impossibility of accurate vision in the soldier—the insignificance of the difference, or inaccuracy in point of time—the consistency of the prisoner's case with his occupation—and your own recollection, that if the defence were fabricated, and the testimony of Butler suborned, it would not be more false, nor more dangerous, to state the time half an hour earlier than he did, and that the prisoner could best tell how the question of time would apply, and if suborning evidence, would square it accurately to the occasion—I say, taking all these things together, you must entertain doubts upon the case. How are these doubts to be resolved? It is not any thing which I can weakly urge, that can excite doubts; they must arise from the bare statement of the facts. It is not by any thing which the solicitor general may say,

that your doubts will be satisfied; it is not to the superior ingenuity, talents, or understanding of one man, that you will fly to settle such doubts as may arise in your minds, any more than you will suffer a doubt to be created by the plain and blunt reasoning of another. You must look to the bench, and their lordships will tell you, that if you have a rational doubt, you are relieved from considering the difficulty and the responsibility of deciding upon your own judgment. The language of the law in such cases is concise and imperative—you must acquit the prisoner.

The circumstances of character then become material, when there is room for doubt; and the prisoner has not only shown a good general character, but a character peculiarly applicable to his defence on this prosecution. He has shown, that in the former rebellion in 1798, living, as it were, in the very focus of popular frenzy, in the most disturbed and infected spot in Ireland, he was not even suspected. This character will now highly avail him. God forbid it should be otherwise! God forbid, that such of the people of the disaffected parts of this city—of the surrounding country—of that very town from whence the prisoner came, said to be the fountain of disaffection—that such of those people who have escaped from this infection and have remained peaceable and loyal in the midst of the late dreadful explosion, should not know and feel, that they have not only secured themselves from present danger, but have laid up a fund of merit to which they may resort for safety, if unhappily they should hereafter be placed in doubtful and suspicious circumstances;—that having stood clear of the madness which raged around them, following their ordinary and useful occupations, as this man did—that that alone, and the fair reputation they have thereby acquired, shall strongly avail them, if by fraud, treachery, mistake or accident, they should be accused and deprived, as this man is, by circumstances, and indeed by the very nature of his case, of every other defence. You will tell them this: that every man who has lived by his trade, distinguished by honest conduct and peaceable demeanour, and can establish after this transaction such a character and reputation in evidence as the prisoner has done, after a period more troublesome than the late one, as more seducing and likely to draw men into its vortex—that character may obtain a verdict in their favour, which, it was possible, without it they might not be able to procure.

Gentlemen, upon this ground, that your judgment if not decidedly in his favour, must at least be doubtful, and that acquittal is the legal and necessary consequence of doubt, I do with humble confidence commit to you and to humanity, the fate of the prisoner.

REPLY.

Mr. Solicitor General.—My Lords and Gentlemen of the Jury; In consequence of the

observations which have been made by the counsel for the prisoner, it becomes necessary that I should submit a few remarks to you upon the part of the Crown. You would not have been troubled with any observations from me, but for the speech of the gentleman on the other side. I do not mean to object to the conduct of the counsel of the prisoner in speaking to the evidence, he has discharged his duty with zeal and ability; but I mention it as my excuse for trespassing upon your patience, in a case which otherwise would not require any observations.

Gentlemen, in this case, no questions of law or difficulties in matter of fact arise. The only question for your consideration is, "what part the prisoner took in the insurrection of the 23rd of July?" In order to ascertain that, I will first call your attention to the evidence which has been given upon the part of the Crown, and then to the exculpatory evidence on behalf of the prisoner.

It appears, that at half past nine o'clock, a party of the army arrived at Thomas-street, where they were met by a man, who was plainly a sentinel, advanced at a considerable distance from the main body;—he was seized, and you recollect what his conduct was—he struggled, and made every resistance in his power, but he was overcome, and secured as a prisoner within the division. The first man thus met with by the army, was armed with the weapon of a rebel, and showed the determination of himself and his party, to be directly opposite to the duty of the army. One was supporting the government of the country, the other was endeavouring to put it down. The seizure of this man is the signal of attack upon the king's forces;—a bottle was thrown and a shot was fired, by which a soldier was killed. The men of the first division were ordered to fire, and after the first volleys began an independent fire, each soldier firing as he could see an object, or thought he could do service. By the light of this fire, and by the assistance of the lamps, the soldier and the officer distinguished some men with pikes. These men were at the side of the street, and the reason of their being at the side is obvious, it was to avoid the fire of the musquetry which was directed down the centre of the street. Two men were taken in this place; the first was Roche, the second Kearney. With regard to their guilt, you are to dismiss it altogether from your minds; I mention them only to distinguish them from the prisoner now at the bar, who is responsible for his own conduct only, and you will determine from the evidence applied to him, how far he was present at the time of this attack for the same purpose, and with the same views as the other persons.

It appears, that this firing thus kept up, and which from its nature spread a continued glare, not sudden like a volley, but constant, the men firing one after another,—afforded a sufficient degree of light to distinguish ob-

jects. The witness Watt was upon the left of the division, next the flag-way, and the prisoner was upon the flags. The soldier did not observe him till he came close,—which is accounted for, not from want of light, but that the attention of the soldier was directed toward the enemy in front, rather than to the place where the prisoner was. The prisoner approached within a yard, when he was called upon to stop;—at the time he was thus called upon he was armed with a pike, which was described as a white pole. Is there any doubt, that the witness could distinguish that weapon clearly, when the firing was going on in front, and lamps were on the same side of the street with the prisoner? Is it credible or doubtful in the slightest degree, that a soldier could see the weapon under such circumstances? But see how he is fortified by the other witness, North:—He heard something fall the moment the first soldier called out; and a pike is found at the feet of the prisoner. The first soldier called to the prisoner, and there being only a short interval of space between them, he stepped out and seized the prisoner. North at the same time heard the pike fall, and there was no other person near the prisoner who could throw it down. Can you believe that the soldier threw it down? and therefore when the learned counsel insinuates, that some other person threw down the pike, he must mean the soldier, which you cannot believe. Watt and North both appear to be men of very clear understandings, more capable of ascertaining and describing facts accurately, than usually occurs in their rank of life.

Then with regard to the remainder of the transaction, see what takes place. The prisoner is seized and brought into the ranks—if he were that honest and loyal subject, which has been attempted to be shown by evidence of his character, what would have been his conduct when he saw the king's troops? He would have been delighted at being rescued from the rebels—he would have submitted—he would have incorporated himself with them. Can you believe, that at that moment of danger to every loyal man, when the streets were strewed with their dead bodies, that a person of loyal character and disposition would fly from the soldiers, or resist being brought within their ranks? There is no doubt upon this part of the case; it is proved by irresistible evidence, and it is given up by the counsel for the prisoner. Force was necessary to restrain him; but why did he resist? His counsel would have you believe, because he got a blow. Why did he get the blow? because one soldier was not able to hold him, the assistance of others was necessary. Was that the conduct of a loyal man? It is impossible that any rational person can form such a supposition; nothing but the treasonable purpose of assisting the insurgents and being one of their body, could have induced him to act as he did.

Thus is the evidence for the Crown of that kind and character, that you cannot well refuse your assent to it. The veracity of the witnesses is not impeached, and it is only said, that they may be mistaken. But it appears to me that there is no circumstance in the case upon which that allegation can be supported. The two witnesses correspond in their testimony, and all they say is irresistibly corroborated by the conduct of the prisoner himself, in making violent resistance, not only at the moment of his arrest, but long after he was in the custody of the king's forces. Such, gentlemen, is the case, as resting on the evidence given by the witnesses for the Crown.

Now, gentlemen, let me call your attention to the kind of case which has been made on the part of the prisoner. It is not the same which might occur in other cases, namely, that he was surrounded by rebels, and obliged by them to take up a pike. The defence is, that he had no weapon at all. Suppose for a moment that he had not, could he have acted as he did, were he a loyal man? The counsel have given up the idea of compulsion, because we could have contradicted it immediately. What then is the prisoner's account?—He moves all through Thomas-street, without danger or embarrassment, although it was then filled with armed rebels—he marches over the bodies of the dead without fear or apprehension, and passes unhurt and unmolested through that mob, which did not permit a single loyal subject that came within its reach, to escape its fury or brutality. Is this a defence that any rational man can attend to?—Then see what farther is attempted on the part of the prisoner, and which his counsel represented as an answer to the challenge given by the attorney-general, as they allege.

The attorney general in stating the case, alluded to the defence of compulsion, and said, that the prisoner should account for what he was doing, and where he was going at the time of his arrest. Accordingly here, two or three witnesses have been produced, whose testimony strengthens the case on the part of the Crown; as it not only shows that the prisoner was with a party of rebels at the time he was taken, but that he had been for several days before plotting that rebellion, which on the 23rd. July broke out. Observe the company the prisoner selected for three days before the rebellion—that James Kearney, who was examined for him, was his only companion. I do not ask you to decide upon the character which Kearney gave of himself, but upon the character which was given of him by Butler, the other witness for the prisoner, who tells you he remonstrated with the prisoner for keeping company with such a low, dissipated, idle fellow, and that it was a shame he should be seen with a man so much beneath him. It is fair to say, that a man is often judged of by the company he

keeps. It will be for you, gentlemen, to judge what could have induced such a loyal, industrious, and virtuous man, as the prisoner is represented by his counsel to be, to have associated and spent his whole time from the Thursday preceding the rebellion, with such an idle, dissipated, low and profligate person as Kearney.

Now let me call your attention to the transaction of the prisoner's going to Rings-end to purchase the house, and from thence to the Pigeon-house. He and Kearney were employed in that neighbourhood for near three days, and from the facts which have come out, I will venture to say, that there never was any such transaction as a treaty about the house, but that some much more important business took them to the Pigeon-house, where a quantity of the king's military stores, and artillery are deposited. The allegation of the prisoner is, that he wanted to take the house at Rings-end; he never looks at it, as is customary, to know whether it would suit him. How did he know there was a house to be let at Rings-end? Does he ever ask for Kearney in town?—no such thing; but he goes off to Rings-end, apparently without knowing that there was a house to be let there. Is that accounted for? No such thing is even attempted. He is informed of the house by his worthy companion. Does he examine it to see what it is, or what alterations it might require? Does he go to Corcoran, to whom reference is made for the terms, and who was upon the spot? No such thing; but he goes to the depôt of the king's stores. See, then, from the cross-examination of Kearney, how they spent the day:—they went at two o'clock, and returned at nine in the evening; so that, allowing ample time for the distance and the time spent with the gunner, there are four hours unaccounted for. How were they occupied for those four hours?—whether in walking to that place,—which is stretched by the fancy of the prisoner's counsel to a distance of five miles,—or in reconnoitering the place, is for your determination. Four days before the rebellion, the prisoner lived at Naas; he came suddenly to Dublin. Is he engaged in the line of his business? No; but he goes off to reconnoitre the king's stores at the Pigeon-house, and his own witness, the gunner, acknowledges that an attack was meditated upon that place. See how this idea is corroborated by the conversation with the gunner. The prisoner enters into no bargain, nor is any thing done towards a bargain, though he remained in town two or three days. Can you believe that a man in his situation of life, not able to afford such a loss of time, and only coming to Dublin for three days (as he was to leave town on Sunday morning at six o'clock) would depart without taking any other step in the matter, and leave the whole to his respectable friend, Mr. Kearney? It is impossible, to my imagination, that any jury can readily swallow such a

story; and if you believe that the prisoner has attempted a fabricated case, it goes to strengthen and confirm the case against him.

But see whether the subsequent part of his evidence does not tend to put his case in the same point of view. He came from Naas:—has he produced a witness to show the removal of his stock in any article whatever? Has he brought any witness from Thomas-street, where he said he lodged, to show where he resided on Tuesday or Wednesday?—Could not a man, upon trial for his life, produce those witnesses—their absence condemns his case—who is it could prove it, if true?—A man intimately connected with him, his brother-in-law, upon whom he could depend; is he produced even to show that the prisoner was expected at his lodging on Saturday night? The non-production, therefore, of this witness shows, that the other part of the case is fabricated; and it shows, that his visit to the Pigeon-house was for the purpose I have mentioned.

At a quarter past nine, Kearney tells you, he and the prisoner separated. Where does he go?—To a baker in Abbey-street—he arrives at Butler's, and stays with him till half past ten—so that there is no mistake by Butler with regard to the time, as alleged by the prisoner's counsel; he and Kearney agree and tally exactly; at half past nine, he quits one and arrives with the other; so that the inconsistency which was relied upon to prove there was no confederacy amongst the witnesses, is not founded, because they are perfectly consistent.—But, says Mr. Ball, it would be ridiculous to fix upon an hour, when the soldiers, who took the prisoner, could ascertain it.—And why keep back the prisoner from Thomas-street?—Because they knew that all the outrages, all the murders of that melancholy night, were committed in Thomas-street before ten o'clock—so that upon that account you can reconcile their anxiety for keeping the prisoner out of Thomas-street till after ten o'clock. The prisoner produces no companion from Abbey-street to Thomas-street, because there were none there but such as were implicated in this transaction, and it might not be convenient to them to appear.

It seems, that at half-past ten, as the prisoner asserts,—but earlier, as we contend—the prisoner proceeded to Thomas-street.—He might have entered by the market-house, or by Dirty-lane. If he entered by the Market-house, he must have met the great body of rebels there assembled, armed with pikes.—Could a loyal man pass through them?—It appears, from many melancholy examples, he could not. But suppose he passed through them, how could he proceed so far as James's-gate?—His counsel allege he was without a pike—the answer is, that the want of it would have procured his death.—But suppose he came in by Dirty-lane, if he had a fair story to tell, why not account for the remainder of his progress?—No attempt is made to do so—no witness

is produced, nor was it even hinted at in statement.—If I say he came up Dirty-lane, rebels were there collected and other obstructions, sufficient to caution a loyal man that he could not pass. Then how does he get into the situation in which he was found?—It is impossible he could but as one of the rebel party. In addition to all this, it appears, that the house, to which he alleges he was going, is situate upon the opposite side of the street from the place where he was found. But when I allude to the circumstance of his going to Gilligan's house, I must remind you, that the declaration of the prisoner himself is the only evidence in the case to support the assertion. When a man makes an assertion, which becomes material upon his trial, and has witnesses to prove it, if true, it is not to be regarded unless the witnesses are produced. In this point of view, the non-production of the brother-in-law, his wife, or any of the family, any one of whom might satisfy you of the fact, is conclusive against the prisoner as to this point.—Why not produce them? Is it because they are hostile to him?—No, but because they could not tell truth, consistent with his story.

Gentlemen, I was willing in the outset to leave this case to you, like the former ones, without observation on my part. It is as free from difficulty as the others. But observations were made with an endeavour to lead your minds from the real object of the case. I have attempted to draw back your attention to the evidence on the part of the crown. It is a plain and simple narrative against which there is no objection, and I have gone through the evidence of the prisoner, only to meet the observations of his counsel.

I have now but one word more to say, which is this: on the part of the Crown it is my duty to call upon you for a discharge of your important trust, with equal justice to the country and the prisoner; and I concur with the prisoner's counsel, that where there is a reasonable doubt, the prisoner should have the benefit of it, and you should acquit him—such a doubt as rational men may entertain under all the circumstances of the case—not an idle speculative conjecture. If you do truly and sincerely doubt of the guilt of the prisoner, in the name of God acquit him. But if, on the other hand, you have no doubt, you feel the evidence against him to be irresistible, you are bound, under a solemn obligation, to find him guilty. Your humanity has been appealed to—I shall never resist such an appeal—but you will consider whether you will show your humanity more by the acquittal of the prisoner, although you should believe him guilty, or, by his conviction, which, by its example, may tend to save the lives of thousands; by which tranquillity may be restored, and rebellion extinguished.

SUMMING UP.

Mr. Baron Daly.—Gentlemen of the Jury;

—The prisoner at the bar stands indicted for high treason, in compassing and imagining the death of the king, and also in levying and making war, insurrection, and rebellion against the king and his government. The overt acts stated in support of these treasons are the same, namely, that the prisoner, on the night of the 23rd day of July last, was armed with a pike, aiding and supporting the rebellious insurrection which took place upon that night, and that he did levy war and rebellion.

Gentlemen, there are two questions for you to consider:—first, whether any rebellion, of the nature mentioned in the indictment, took place on the night of the 23rd of July last. Secondly, if there did, what part the prisoner took in that rebellion?—With regard to the first question, I shall trouble you with a very few words, because the whole tenor of the evidence on the part of the prosecution proves, and the line of defence which has been taken by the prisoner's counsel, admits, that such a rebellion did take place upon that night; so that, whether you look to the evidence of Mr. Wilson, who proves the numbers he saw in Thomas-street, unarmed—the way by which they proceeded to the depot, and their coming out armed from that place. Whether you look to the evidence of Mr. Coultman, as to the contents of that depot, namely, hand-grenades, powder, and ball-cartridge, to an immense extent, pikes, materials for conflagration, proclamations expressive of rebellion, flags and colours and military uniforms—whether you look to all these, or to the line of defence taken by the prisoner, no doubt can remain in your minds, but that a rebellious insurrection took place upon that occasion. It is the duty of a jury to weigh the evidence, where a party denies a fact, and evidence meets evidence; but where the fact is admitted, the jury can have no difficulty.

Therefore, gentlemen, I shall only trouble you with the evidence which relates directly to the prisoner at the bar.—The first witness examined was lieutenant Brady.

[Here the learned judge recapitulated the evidence as given by the several witnesses, and observed:]

If you, gentlemen, believe the witnesses, the prisoner had a pike in his hand. When he was seized, he made violent resistance. If he were not engaged in the rebellion, his conduct, in my apprehension, would have been of a different nature. If he were an innocent man, he would have rejoiced at meeting with the soldiers—he would have felt that his greatest danger was his being unprotected, and that the only protection he could then wish for, was from the king's officer.—But what was his conduct, if you believe the evidence?—A continued struggle from the time he was taken, till he was brought to the command of the forces.

A great deal of stress seems to have been laid by the counsel for the prisoner upon the

manner in which he was going when he was taken up. It was argued, that if he had wished to escape, he would have gone the opposite direction from that which he went. But it is for you to consider, whether it was not easier for him to effect his escape by going in the direction in which he went, than the opposite direction, at the time of the fire of the troops. They fired down the street, and the prisoner was going fast from the first division to the rear division, which was in a direction in which he could not be injured by the fire, and he would have escaped altogether, had he passed the rear division.

Gentlemen, the defence set up is of a peculiar nature; not so much contradicting or controverting directly the facts which have been proved, as a defence by way of inference, from which you are called upon, if you believe it, to pronounce him an innocent man.

It appears that the prisoner is an inhabitant of Naas, a town situate sixteen miles from the city of Dublin, and it certainly was incumbent upon the prisoner,—not being an inhabitant of Dublin, being found in such a place, and upon such an occasion,—to show why he was in the city at that time.—His defence is offered to show, that he was in the city upon an innocent occasion.

[Here the learned judge stated all the evidence given by the witnesses examined for the prisoner, and expressed his opinion, that the testimony of Mr. Courtney, who was examined to contradict one of those witnesses, ought to be put out of the case, as not being very clear upon the identity of the man.]

He then proceeded:

It is my duty, gentlemen, to make a few observations upon the evidence.—With regard to the hour; at which the prisoner (if you believe his witnesses) was in Abbey-street, it differs from the time stated by the witnesses for the prosecution. If you believe the testimony of lieut. Brady, the prisoner was in Thomas-street at a much earlier hour than he could have been, if the witnesses on his part swear true. It is for you to judge with regard to that contradiction; and if you should believe the witness for the crown as to the hour, the conclusion which would naturally follow, but which is for your determination, is, that the defence is fabricated.

The material fact to ascertain is, whether the prisoner was found in Thomas-street armed with a pike against the king's troops? That he was there is not disputed; that he struggled is not disputed; and the only circumstance upon which a shade of doubt is cast, is, whether he had a pike?—That is not contradicted by direct evidence; nor could it from the nature of the case. But it is controverted by inference—by showing, that he came from Naas with an innocent intention, and therefore was not likely to have a pike. There is one thing remark-

able, however, that though he said he resided for the occasion in Thomas-street, there is no evidence that he did reside there. He himself said, that he lodged at Gilligan's in Thomas-street, but there is no evidence of the fact; and the only evidence of his being in Thomas-street at all, goes to show, that he was there at the time the king's troops were engaged with the rebels.

With regard to the innocence of his design in coming to town, there is evidence that he was agreeing about a house; but no serious act appears to have been done towards an agreement. There was no money paid—no terms stipulated—nothing to bind the bargain, or to show it was concluded upon. This house, which he asserts he wanted to take, lay in the way to a place where there is a great depôt of arms and ammunition; the prisoner and Kearney went to that place for the alleged, or the real purpose, of taking a house, and it appears they were some time there; how long does not appear, but they were in that place where this depôt of arms and ammunition was, and that a few days before the insurrection took place.

It also appears, that the object of the prisoner being, as the witnesses for him say, to take that house, having gone there three times for that alleged purpose, no evidence is adduced to show that he ever examined the house, or went into it. However, gentlemen, if you can believe, from that kind of evidence, that the intention of the prisoner in coming from Naas to Dublin was the innocent one of taking that house, or any other—that he went to the Pigeon-house with a sincere intention of making a bargain;—if you believe, from his own assertion, that he lodged in Thomas-street, and that he was in Abbey-street at the time his witnesses say, and notwithstanding what the witnesses for the crown say, that he innocently went to Thomas-street, and was standing innocently there during the action—or if you have any reasonable doubt of that you ought to acquit the prisoner. But in doing so, you must reject the testimony of the soldier, and many circumstances that flow from the evidence of the prisoner. But again I say, if you entertain a doubt, you should acquit him. Yet it is my duty to tell you, that the doubt should be the doubt of reasonable men, after giving due consideration to the evidence. If after giving such weight to the evidence as you think it deserves, you entertain a doubt upon the case, you should acquit. But if, on the other hand, you believe the evidence for the crown, it is your bounden duty to give that verdict which the crown and the public, in such a case, have a right to demand—a verdict of conviction.

I have now a few observations to make with respect to the evidence of character.

Mr. Mac Nally.—My lord, will you excuse me? There were some witnesses called who did not answer: I understand they are now in court. Perhaps your lordship would wish they were examined before you conclude.

Mr. Baron Daly.—By all means: call them. *John Kennedy* sworn.—Examined by *Mr. Mac Nally.*

Where do you live?—In Abbey-street.
What business have you carried on this some time past?—Discuit baking.

You have contracts from government?—I have.

Do you know the prisoner?—I do.

How long?—These ten years.

Where did he live?—Opposite to my house.

Where did he live the last six years?—I heard he lived in George's-street, and some time in Naas.

Have you heard his general character?—I had no occasion to inquire into his character.

Have you heard his character for loyalty impeached?—No.

Was he a quiet man?—He was a quiet man, when he lived in my neighbourhood.

[Not cross-examined.]

James Dodd sworn.—Examined by *Mr. Ball.*

Where do you live?—In Naas. I have a public-house, and the mail-coach office these ten years.

Was Naas much disturbed in the year 1798?—It was.

Do you know where the prisoner lived?—In Naas, opposite to Mac Donnell's inn.

How long?—Four years.

Are you acquainted with his general character?—I never heard much of him; I heard he was a peaceable, quiet man.

Have you ever heard him impeached as a disloyal man?—I have not.

[Not cross-examined.]

Luke Duff sworn.—Examined by *Mr. Mac Nally.*

You live in Marlborough-street?—I did.

Where now?—In Earl-street.

Do you know the prisoner?—I do.

How long have you known him?—Ten or twelve years.

During your knowledge of him, have you ever heard his character impeached for disloyalty or sedition?—I have not.

Court.—Do you know any thing of him during the last four years?—No, I do not.

[Not cross-examined.]

Mr. Baron Daly.—Gentlemen, with regard to character in cases of this kind, I shall observe, that the kind of character which you are most called upon to consider, would be a character of loyalty. I do not mean negative characters, but express character of loyalty; and if such character appeared, and you had any doubt in the case, and you believed the prisoner was a loyal man, it should weigh much with you. But the evidence offered is not such: in my opinion it is inadmissible ev-

dence, but it must diminish much in its weight, when it is not only negative in respect of loyalty, but goes only to a peaceable demeanor, and that at a period remote from the time of the accusation. The evidence offered therefore is not of the same force with evidence of active loyalty. However, if from what you have heard, you believe that the prisoner is an actual loyalist, and you have a doubt upon the case, you will acquit him.

The jury retired, and in five minutes returned a verdict of--Guilty.

The prisoner was remanded.

On Saturday, the 3rd of September, the prisoner was brought up for judgment. The indictment was read, and he was asked what he had to say, why judgment of death and execution should not be awarded against him. He did not make any answer.

Mr. Baron *Daly* proceeded to pronounce the sentence. He observed upon the crime of which the prisoner was convicted—that upon embarking in a treasonable conspiracy, he departed from the former habits of his life, indolence, idleness, and dissipation, and sud-became active and zealous, in the vain expectation of establishing “a free and independent republic,” when every disorder might be committed, every excess indulged, and every principle of justice, religion, and humanity violated. The verdict of the jury had esta-

blished, that the treaty for the house in Rings-end, was a mere pretext, and it did not appear that one effectual step was taken towards a completion of the contract. With respect to the allegation that he lived in Thomas-street, the only evidence to which the jury could attend of his having been there, was, that he was there in arms, opposed to the king's forces. The object of the conspiracy, in which the prisoner embarked, was defeated, and instead of the pillage and massacre which was expected, the prisoner was brought to the bar of justice. Whatever his individual motive might have been, the learned judge reminded him, it must have been disappointed; and if amidst his crimes, he had preserved any principles of religion, it was full time to rouse them into action. It was incumbent upon him to be reconciled to the Searcher of all hearts, which could only be effected by sincere repentance, preliminary to which, a full disclosure of his crimes was essential—and infinite as was the mercy of God, he would not receive a sinner, who uttered falsehood in the last moment of his existence in this world. The learned judge then pronounced the sentence in the usual form.

Prisoner.—I am as innocent as the child unborn. I leave it to my God, I never saw a pike in my life.

He was executed the following day in Townsend-street.

658. Trial of JOHN BEGG for High Treason; before the Court holden under a Special Commission at Dublin, on Saturday September the 3rd : 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.

Saturday, September 3rd, 1803.

Judges present :—Lord *Norbury*, Mr. Justice *Finucane*, Mr. Baron *George*, Mr. Baron *Daly*.

John Begg was put to the bar.—He had been arraigned on Wednesday, the 31st of August, † upon the following indictment :

County of the city of Dublin, to wit. } THE jurors of our lord the king upon their oath present that *John Begg* late of Bonham-street in the city and county of the city of Dublin yeoman a subject of our said lord the now king not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against

* From the report of William Ridgeway, esq. barrister at law.

† The preliminary proceedings will be found at the commencement of *Kearney's* trial.

our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and intending the peace and common tranquillity of this realm to disquiet molest and disturb and the government and constitution of this realm to change subvert and alter and our said lord the king from the royal state honour power imperial crown and government of this kingdom to depose and deprive and our said lord the present king to death and final destruction to bring and put he the said *John Begg* on the twenty-third day of July in the forty-third year of the reign of our said lord the king to Bonham-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord off and from the royal state crown title power and government of this realm to depose and wholly deprive and

our said lord the king to kill and bring and put to death And that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations and compassings aforesaid he the said John Begg as such false traitor as aforesaid on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king at Bonham-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did conspire confederate and agree to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this kingdom

And afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Bonham-street aforesaid in the city and county of the city of Dublin aforesaid the said John Begg as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid did arm himself with and did bear and carry a certain weapon called a pike with intent to associate himself with divers other false traitors armed with guns swords and pikes whose names are to the said jurors unknown for the purpose of raising levying and making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Bonham-street aforesaid in the city and county of the city of Dublin aforesaid the said John Begg as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the said jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said John Begg against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

And the said jurors of our said lord the king upon their oath do further present that the said John Begg being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said

sovereign lord the king and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Bonham-street in the city and county of the city of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom And in order to perfect fulfil and bring to effect the said traitorous compassings imaginations and intentions last mentioned of him the said John Begg he the said John Begg afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Bonham-street aforesaid in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of him the said John Begg against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

The prisoner pleaded Not Guilty, and being this day asked, whether he was ready for his trial, he answered he was.—The panel was then called over, and being put to his challenges, the following jury was sworn :

Peter Wilkinson,	Francis T. Brady,
Henry Bingham,	George Gibson,
James Nugent,	Thomas Jackson,
Robert Smith,	John Raper,
Richard Litton,	George Rafferty,
William Bond,	John Orr.

The prisoner was given in charge.

The Counsel and Agents for the Crown were the same as on the former trials.

Counsel for the Prisoner, Mr. Mac Nally and Mr. C. Ball.

Agent.—Mr. L. Mac Nally.

Mr. O'Grady opened the indictment.

Mr. Attorney General.—My Lord, and Gentlemen of the Jury;—We shall shortly submit to your consideration such evidence, as we trust will be sufficient to satisfy your minds, that a rebellious and traitorous insurrection existed in this city upon the 23rd day of July last, and then it will be your duty, gentlemen, to attend with every possible degree of diligence to the evidence which will be adduced to show, how far the prisoner was connected with that insurrection. He is a resident of

Dublin, and a carpenter by trade, and though he belongs to a description of persons who must have been particularly active in the rebellion, you ought to discharge that circumstance from your minds, because though many of his trade must have been guilty, yet that is matter of general inference, and should not bear against the prisoner upon this trial.

Gentlemen, where the rebels were collected in a body, though many of them suffered by a well-directed fire from the military, yet few were apprehended; those who were taken were, for the most part detached as outposts, for the purpose of apprising the main body of the approach of the military upon them. It will appear that there is a lane at right-angles with Marshalsea-lane, in which there was a considerable quantity of arms and ammunition collected; various devices were resorted to for the purpose of protecting this place from attack: there is a street running parallel with the lane, called Bonham-street, from which there is also a passage to that lane. The prisoner at the bar, standing sentinel at Bonham-street, was discovered at no great distance from the frame of timber which you will hear described, and which was prepared for the purpose of being filled with powder, and exploding, so as to annoy any force which might advance. A soldier of the ninth regiment, who first perceived the prisoner, said, "There is a man with a pike," and upon hearing the exclamation, the prisoner fled into a timber-yard; he was pursued and arrested, in a situation in which he endeavoured to conceal himself. If these facts shall be clearly established by evidence, there can be no doubt that the prisoner was armed with a pike for the purpose of aiding those who were engaged in the conspiracy. If he took up the pike with that intention, he is guilty of the crime charged against him.

Edward Wilson, esq. sworn and examined.

He gave the same account as upon the first trial.—[*Vide Kearney's Case, p. 711.*]

[Not cross-examined.]

Wheeler Coulthman, esq. sworn.—Examined by *Mr. Townsend.*

Do you remember the night of the 23rd of July last?—I do.

Had you any party with you that night?—I had about twenty-eight men.

To what place did you proceed?—To the left of Bonham-street, where a box of ball-cartridge had been found. I saw eight pikes there.

Was that near the place where the dépôt of ammunition was afterwards found?—It was.

Mention what you saw?—I saw an obstruction across Bonham-street, which is parallel with Marshalsea-lane; Bonham-street is separated from that lane by three timber-yards, and one dairy-yard. There was another obstruction across the lower end of Dirty-lane,

they were formed of hollow beams of timber placed upon cars without wheels.

Were they obstructions even without exploding?—They were.

Would they obstruct the progress of any force that advanced from Usher's Island?—They would.

Look at the prisoner at the bar; did you see him?—I did.

Where and when?—I saw him in a timber-yard in Bonham-street.

Do you mean one of those timber-yards which you mentioned as being between Bonham-street and Marshalsea-lane?—I do; it was in the timber-yard next Bonham-street.

Had he any arms?—Not that I saw. It was a quarter past twelve at the time; a private of the ninth mounted upon the wall, and said, "Here is a rebel with a pike." I handed him a pistol, and desired him to jump down, and not let the man hurt him, but to open the gate; I then got into the yard, and saw the prisoner dragged from under some fresh timber, the roots of trees I believe; there was little more than his legs seen, and by them he was dragged out; I seized and tied him, and gave him to a party of the thirty-eighth regiment.

Was he in a place convenient for watching the dépôt?—I cannot say it was.

Was any person with him?—No; and I saw but one pike there, within a yard of where the prisoner was lying.

How far was this yard from the beam of timber which you said was across Bonham-street?—About twenty yards, not reckoning the space over the wall.

Was it easy to get over the wall?—It was; for there was a quantity of pipe timber raised against the wall upon which we climbed.

If it were necessary to set off the machine, must there not have been some person near it?—Certainly, with a rocket, or a match, to let it off.

[This witness was next examined respecting the contents of the dépôt, and gave the same account as before.—*Vide Kearney's Case, p. 720.*—He stated, that a number of flints were found of remarkably good manufacture, and of a whiter colour than those made in this country.]

Wheeler Coulthman, esq. cross-examined by *Mr. Mac Nally.*

Was the machine which you saw, loaded?—I cannot say; I did not see any powder in it.

If it were not loaded, it would not be necessary for a man to be standing there to let it off?—No; that is very clear.

The night was very dark?—Not at that time; it was turned of twelve, and was so light, that upon approaching Queen's-bridge. I could see three horsemen, and upon challenging them they answered, "Friends;" but not stopping, as I bid them, I desired some of the men to fire.

You could not see their faces?—No; nor whether they were soldiers or not; but upon desiring them to stop, they turned down the quay.

You could not distinguish a man's face?—No; not at that distance.

How did the night advance, was it lighter or darker after ten o'clock?—It grew lighter; it was very dark at ten o'clock.

Court.—Did the prisoner say any thing by way of excuse?—I asked him, "what brought him there?" he said, "he ran away to avoid the pikemen."

He told you he ran away from a number of pikemen?—He did.

From all you saw, from the instruments of destruction across the street, and the depôt of arms, do you not believe there was a great number of pikemen there?—I do believe it, because colonel Browne had been killed there that evening.

Then an individual could have no chance in staying there as a protector of such a depôt, or in resisting the king's forces?—I am not competent to answer, whether he was there individually by himself, because when the box of cartridge was taken, there were no pikemen there; but when we returned, there were eight pikes found, so that there must have been some there who had dispersed.

Jury.—Did you ask the prisoner where he lived?—I did; he said he lodged in Dirty-lane, and had been to a tailor's for a pair of small-clothes, as I recollect.

Serjeant *Thomas Rice* sworn.—Examined by *Mr. Mayne.*

Were you with lieutenant Coultman upon the 23rd of July last?—I was under his command.

Were you in Bonham-street?—I was.

Was any prisoner taken there?—There was one taken out of a timber-yard.

Who was that person?—The prisoner at the bar; I know him very well.

What did you first see of him?—I found him under some timber.

Was he concealed?—He was; I could only see his legs and feet.

How far was this from the street?—Within ten or a dozen yards from the gate.

Was the gate near the street?—It was next the street.

Was any weapon found there?—I believe there was, but I cannot say positively; when taken out from under the timber he had nothing in his hand.

What hour was it?—Between twelve and one.

Are you sure he is the man who was taken?—I am.

[The witness then proved the proclamation found in the depôt.]

Serjeant *Thomas Rice* cross-examined by *Mr. Ball.*

You had been in Bonham-street some time before in the course of that night?—I had.

About what hour?—Between twelve and one.

But I ask you were you there before that time?—I was about half an hour before that.

It had been rather a dark night?—It was.

I believe it was so dark, that as it has appeared from a respectable witness, it was not possible to see beyond a yard?—It was lighter after twelve.

You saw a great number of pikes against the wall, and in the streets?—I did.

The rebels appear to have expected much greater numbers than joined them?—I believe so.

But they seduced many to join them who knew nothing of the conspiracy?—I cannot say as to that, it was understood there were many to join them.

They were rather looking for men than pikes?—I cannot say.

There are three timber yards in Bonham-street?—This yard is on the left hand side, leading from Dirty-lane.

The depôt was found in the lane which crosses from Dirty-lane to Marshalsea-lane?—Yes.

Then there is a considerable space between the depôt and the place where the prisoner was found?—There is some.

The depôt is on the left hand of the lane?—It is.

Then there is the space of several timber yards from Bonham-street to that lane?—There is.

John Gallagher sworn.—Examined by *Mr. Solicitor General.*

Do you remember the night of the 23rd of July?—I do very well.

Do you know the prisoner?—He is there. [Pointing to him].

Did you see him upon that night?—I did. Where did you first see him?—I first saw him running up Bonham-street.

From what part?—From near Dirty-lane.

How near were you to him when you first saw him?—I was in the front of the party, within ten yards of him.

How many were of the party?—There were three of the ninth, eleven of the barrack division, and some others.

How were your party dressed?—They had all coloured clothes, except the soldiers.

You had scarlet clothes?—Yes.

The prisoner ran off, you say?—He did.

How did he get off?—He mounted on large beams of timber which were next the yard gate.

And what did he do then?—He jumped over the wall.

Had he any arms at that time?—He was armed with a pike.

Did you pursue him?—Over the wall straight; and when I was upon the wall, some of the party desired me not to go down; I said I would go, if I was killed it would be the first time; I called out to my officer, and

said there was the man there; he immediately dropped his pike, and he sunk under some timber. I jumped down with my bayonet, and threw the pike over the wall, lest some mischief might be done, and I called for a hatchet which the party had, and I broke open the gate. The serjeant came, and I said, the man sunk there, and I desired the serjeant to take him out.

Was there any other person there?—No, there was not.

Was there any other pike?—There was not.

Are you sure he is the person you saw in Bonham-street?—I should be very sorry to come here with a lie in my mouth. He had a grey coat on, and a ticken praskeen before him.

Are you sure he is the person?—I am.

John Gallagher cross-examined by *Mr. Mac Nally*.

The party was in coloured clothes?—Many of them were; but they had cross-belts. I was in front, and my officer followed with a flambeaux.

What arms had you?—I had no musket, but I had this bayonet.

There was a blunderbuss among the party?—There was.

There was a hatchet?—There was.

Your officer had a sword and pistols?—He had.

You knew that?—I did; because I brought them up to his room.

That is a very good reason for knowing it. Were you here during the former trials?—I was, but I was not called till now.

Did you hear that a man headed the party, with a scarlet jacket?—I did not hear any thing about it.

Did you see any of the rebels that night?—I saw some of them, when they were going to kill me.

Were they in coloured clothes?—They were.

You made from them?—I did, being by myself.

They were in coloured clothes?—They were.

And armed with pikes?—Yes.

Now, if you had met a party in coloured clothes, one carrying a blunderbuss, and another a hatchet, should you not run from them as rebels?—I knew them all to be good soldiers.

But if you did not know them, might you not mistake them for rebels?—If they were armed with pikes, I would know them to be rebels.

Might you not mistake captain Mac Cabe for a loyal man?—It would be very odd, being ten years in the army, if I would not know the difference between a rebel's head and a soldier's.

Suppose you met recruits, should you know them to be soldiers?—I do not reckon them soldiers till they are disciplined.

You took this man with your bayonet?—No, I desired the serjeant to take him.

He was near being killed afterwards?—He was: but I said he might be a good watchman, that he had good guts, and could give information; otherwise he would have been killed.

But if you were single, would you not take him with your bayonet?—I would if I could before I would let him kill me; but he had not the courage of a soldier, or he might kill me as I mounted the wall by myself.

You said you threw the pike over the wall?—I did, certainly.

Then there was no pike in the yard?—There was no pike when I threw it from the yard; he dropped it in the yard, when I called out, "he was there;" he sunk under the timber, and I let the officer in.

You threw the pike into the street?—I did, and afterwards opened the gate.

When you went in, you did not know but there might be more men than one, and therefore you threw the pike over the wall?—For fear of mischief I did; for fear there might be more there to sacrifice me while I was opening the gate: then from that he was taken and given to the guard in the lane; we then went to Marshalsea-lane; some said there were loads there, and I went there; the party came as hard as they could lick, and I saw a great quantity of pikes; I mounted the pikes and got into the stores.

Why did you not fire at the rebel as you supposed the prisoner to be, when you saw him in the yard?—Because I had no pistol; my officer gave me one afterwards.

Court.—Be accurate as to the time when you threw the pike over the wall; did you throw the identical pike which you saw the man drop?—The very pike.

Before you opened the gate?—Yes.

Was there any other there?—Not that I saw.

Did you wait to see the pike thrown down?—I did.

Was any search made for any other man?—I cannot say.

Was any of the party with you in the yard at the time you threw the pike over the wall?—No one but myself.

John Gallagher examined again on behalf of the prosecution.

After the gate was opened how many of your party came in?—That is hard to say; a man in such a fluster as I to count heads at that time!

But some of them came in?—They did; but the serjeant was the first.

What became of the pike?—It was given to a party of the thirty-eighth, after the prisoner was given up.

[The witness was desired to withdraw, and *Lieut. Coulman* was called again and examined by the *Court*.]

You have been present when the last man was examined?—I was, my lord.

In your direct examination you said you found a pike, and but one within the yard, when the prisoner was dragged from under the timber?—I have.

You heard the last witness say, the pike was let fall by the prisoner, and thrown over the wall by him, the witness, before he opened the gate; of course it must of necessity follow, that it was not the pike which you got in the yard?—I could not answer for that; I say I got a pike in the yard near where the man lay.

Do you recollect a pike being thrown over the wall?—I do not; there was a gentleman with me who may recollect better.

When the prisoner was taken, what conversation passed respecting the pike?—I asked him what brought him there? he said he ran away from a number of pikemen. I asked him why he was out so late? he said he had been at a tailor's.

Did you say any thing about the pike?—I asked him about his pike; he said he knew nothing of it.

Jury.—You said you gave the soldier a pistol?—I say so still; I gave him a pistol when I mounted the wall.

Counsel for the Prisoner.—The prisoner told you he lived in Dirty-lane; did he say where the tailor lived?—I do not recollect.

Did he not point out the very house where the tailor lived?—I rather believe he did; it was opposite the timber yard.

Do you recollect whether he told you what his occupation was?—He said he was a carpenter.

Did he tell you where he lived?—I do not recollect; he told me where he lodged, but I do not recollect the house.

Did he tell you in what part of Dirty-lane he lodged?—I cannot say he did; but he told me the name of the owner of the house.

Do you recollect the name?—I do not.

Did you go to the tailor's place?—I did not.

You had some people with you?—I had; and a party came up with major Gordon, and I gave the prisoner to him, and that was the reason I did not go to examine his place.

Jury.—What did the soldier say when he got upon the timber?—He said, "here is a man with a pike in his hand."

Was it then, or after his going over, that you gave him the pistol?—He was upon the timber, looking over the wall, and I drew my pistol from my belt and gave it to him; for we desired him not to go over the wall without it.

John Gallagher called again.—Examined by *Mr. Attorney General.*

Did you get any weapon from your officer upon the night of the 23rd of July?—I did, a pistol when I was mounting the stores.

Did he give you a pistol when you were mounting the wall of the yard, where the prisoner was?—No, but in Marshal-lane, after we went from the timber yard.

Court.—What did you say when you looked into the yard where the prisoner was?—I said, "here is a rebel with a pike in his hand;" and he then dropped the pike and sunk under the timber.

Extracts from the proclamation were here read. *Vide, Kearney's case, p. 723.*

[Case closed on behalf of the prosecution.]

DEFENCE.

Mr. Mac Nally.—My Lords and Gentlemen of the Jury; The Court having done me the honour to assign me as one of the counsels to the man now upon his trial, for the purpose of advising him in his plea, and assisting him in his defence, I have to claim your patient attention in his behalf. The duty is arduous, and to a feeling mind must be accompanied with great anxiety indeed. My client's defence depends in a great measure upon the evidence which has been brought before you by the attorney-general, and in this evidence I shall concisely observe.

Mr. Baron George.—*Mr. Mac Nally,* when you present the last day, when the Court expressed their opinion as to the propriety of counsel reserving observations upon the evidence for the close of the trial?

Mr. Mac Nally.—May I presume, my lords, to inquire, does the Court mean to restrict me in stating the case of my client, from observing on the evidence produced in support of the indictment, and from pointing out the contradictions of the witnesses, and their deficiency in point of credit, if such observations can be justly made?

Mr. Baron George.—You are now to state the case of your client, without observations on the evidence.

Mr. Mac Nally.—That rule having been intimated on a former day, I have looked into several of the English trials, and I find that ever since the privilege of praying counsel by the prisoner, and the assigning counsel by the court, has been provided for by the statute, both of the counsel assigned have observed upon the evidence produced by the crown. I do, with great humility and respect to the court, submit, THAT IT IS THE PRISONER'S RIGHT TO CALL UPON HIS COUNSEL TO DO SO. In the last case of treason tried in England,* and in those cases previously tried in 1794, it was the uniform practice. On the trial of Thomas Hardy,† his leading counsel, Mr. Erskine, not only stated the case of the defendant, but scrutinized and observed upon the evidence, and in commencing his argument, he asserted his right of considering the cause of his client, both as it regards the evidence and the law.

Mr. Gibbs, his coadjutor in that great cause, not only laid down what he considered the law, and his own opinion thereon, the

* See Despard's case, p. 345, of this Volume.

† Vol. 24, 199.

charge against the prisoner, and his own observations resulting therefrom, but also his observations on the evidence given on the part of the prosecution, and in support of the defence, comparing the one with the other, and drawing his own conclusions in favour of his client.

Mr. Baron George.—You are now to tell us the case of the prisoner, and afterwards the evidence will be remarked upon by counsel on each side. We have made the rule.

Mr. Mac Nally.—That being your lordship's opinion, I must submit. It would be ineffectual—perhaps it would be considered presumptuous,—to contend with what your lordships have now made a rule of the court. And I shall therefore, as far as possible, show it obedience, and leave the task of observing upon the evidence to my learned friend, whose ability, I am free to admit, is more competent to it than mine.

Gentlemen of the jury, I have been, by the Court, assigned counsel for the prisoner, at his special request, he being by law intitled to the aid of two counsel; but, narrowed as I am in the exercise of my duty, by the coercive rule which the Court has been pleased to lay down, I would rather sit silent, and leave the whole case to the exertions of my friend, if by so doing it might not give uneasiness to my client, and appear like a dereliction of my professional duty, than address you as I stand circumstanced.

I have to hope that your minds will not be swayed by any incidents of the late disturbances, by any thing you may have heard spread abroad through the medium of public report, or the insidious whisper of private insinuation. All communications out of this court or in this court, except by evidence on the oaths of credible witnesses, should pass by your recollection without impression, like the idle breath of babbling falsehood. You will attend to nothing but the investigation of truth founded on legal proof. It would be absurd to controvert the existence of an insurrection; that there has been a conspiracy and a rebellion in the metropolis, has been made plain to you from evidence unquestionable, and therefore I shall not consume your time on that part of the case. The rule laid down by the Court, does not, I trust, preclude me from saying, that when you come to consider the issue which you are sworn well and truly to try, you will divest your minds of all the facts constituting that rebellion, as matters not at all attachable to the prisoner, and reserve only in your recollection the general conclusion, that a rebellion did exist on the 23rd of July last.

Gentlemen, unless there did exist a conspiracy to dethrone the king, or to perpetrate some other fact whereby his life might eventually be in danger, the prisoner could not be indicted for compassing and imagining his majesty's death. I say also, unless there existed such an insurrection as has been de-

scribed, or other arming of the people, or opposition to those deriving authority from the crown, the prisoner could not be tried for levying war.

You have heard the overt acts read. Then what will be the question for your determination, when you have weighed all the evidence?—It is this, whether the prisoner has to your full satisfaction, and beyond all rational doubt, been guilty of any one of those overt acts?—Now what is his defence? It is too short to bear the appearance of a statement; it is confined to a single point. Gentlemen, it gives me satisfaction to say, that if the facts stated in my brief are true, the defence is exactly coincident with the declaration made by the defendant to lieutenant Coulthman, who, with the candour which has marked his repeated examinations during these trials, fairly disclosed it to the Court and to you.

Gentlemen, the prisoner is not less deserving your attention because he moves in humble life; you are his peers. He is a journeyman carpenter: and it is a truth that he was at work on the 23rd of July: it is true that he was in his working dress, had his apron on, and was with his master from the commencement of the day, down to that terrific hour, when the inhabitants of this city were roused from their peaceful firesides and domestic comforts, by the drums beating to arms. On the firing being heard, he departed from his employer's house, and went to a house in Dirty-lane, where he lodged, deviating a little way indeed to call at a tailor's for a pair of breeches. It was Saturday night, he wanted his new clothing for Sunday morning. This is a material part of the case, but to which the prisoner, from the nature of his situation cannot, I fear, produce conclusive and satisfactory evidence, unless you give credit to the declaration he made, and which has been laid before you by a most credible witness produced by the crown, and which stands uncontradicted.

He states to me, gentlemen of the jury, that on his way to his lodgings, it being then dark, he met in the neighbourhood of the depot an armed body of men, from whom he fled in terror, supposing them to be rebels. The house where his tailor resided, and from whence he came, is exactly opposite to the wall where it is alleged he was first discovered, that is, according to the vague and equivocal evidence of the soldier.

Gentlemen, this is the case of my client. You have heard the case on the part of the crown, upon which I am restricted from observing; but I trust it will not be considered that I overleap the pale within which I am confined by the rule of the Court,—I trust I shall not be considered as animadverting upon the evidence for the crown, or attempting to do more than my duty to my client demands, in calling upon you,—which I think I have a right to do, notwithstanding the in-

junction I labour under—to consider whether the soldier who appeared upon the table has contradicted the simple case I have laid before you: You will consider, whether he has contradicted this case, and you will consider what is still more material, whether in contradicting it, he has contradicted himself or his officer, in any fact sworn to by them; for such contradiction must affect his credit with you. I would say much more to you, gentlemen, upon that point, but in so doing I might be considered as transgressing the rule prescribed to me, and the department pointed out by the Court to my learned friend, that of speaking to evidence, which is now by that rule his peculiar and exclusive duty. But surely I may venture to tell you this,—and I do freely and candidly tell you,—that part of what I state cannot be corroborated by proof of witnesses, or by any other authority than the spontaneous and voluntary declaration of the prisoner himself, as already in evidence before you.

If you believe he spoke truth, when he alleged to the officer, that he fled from a party whom he supposed to be rebels, you will then acquit him, from a conviction that he is innocent, founded upon evidence brought forward on the part of the prosecution, which must always have much greater weight than evidence produced by the prisoner.

It is not speaking to evidence to say this. Indeed, what I am about to recommend to your deliberation has been so often advanced, that the repetition becomes burthensome. Counsel, toiling and anxiously communicating their ideas daily on similar subjects, do not recollect that each jury they address is a new one, and often suppress what they should bring forward. As far as the auditors, who have heretofore heard me, are among those who now attend, what I am going to urge must appear stale, but with you, gentlemen, I hope these repetitions, which my zeal and my duty stimulate, will not be found unprofitable to my client. I therefore repeat—and I therefore supplicate you to hear me with attention when I repeat it—that when you entered that box, your first duty was—and no doubt you felt it to be so—to divest your memories of every impression made by the circumstances of the times; and that you should depart, when you retire to consider your verdict, with minds perfectly free from every recollection of facts, that did not come before you in proof, by witnesses examined in court.

You are not to determine upon the case of the prisoner according to what you have heard abroad, or from what you suppose as private men—not from inferences, not from deductions, not from presumptions, unless they result clearly, satisfactorily and conclusively from indubitable facts, sworn to by witnesses of undoubted credit. You must not find this man guilty, unless your consciences enable you to say, “we find him guilty without a doubt upon our minds;” for the benignity of

the law has drawn an imperative rule for the conduct of juries, that is, “where you doubt, you must acquit.” I will not farther urge, what you must hear from the bench, which you have heard benevolently addressed to you by the leading counsel for the crown, “you must acquit if you have a doubt.” You can not sleep without a thorn in your pillows, if you convicted where you had a doubt. Listen, to, and engrave upon your hearts a golden rule of British jurisprudence,—“It is better that ninety and nine guilty men should escape, than that one innocent man should suffer.”

If you should convict this man with doubt upon your minds, and it should afterwards occur that he was innocent, then God have mercy on your souls in the world to come, for while you remain upon this earth your lives would be lives of torture. But if you acquit him, and he should hereafter appear to be guilty, you will have this consolation, that you acted consistently with law, humanity, and the honest merciful dictates of that mentor which Providence has placed as a guardian angel in every man's breast—his conscience. I say, the positive knowledge of guilt, in cases like the present, can only be imparted to the party charged himself and to heaven. God and the prisoner only can tell, whether he be actually guilty or innocent: you cannot, you dare not assume the power of Providence. You cannot, from what you have heard, determine without a doubt; and with that doubt upon your minds, I call upon you, in the name of the Almighty, to acquit the prisoner.

James Rourke sworn.—Examined by Mr. Ball.

What business do you follow?—A car and jaunting-car maker.

Are you a contractor for military carriages?—I am.

Where do you live?—In Bridgefoot-street. My house is on the opposite side from my working place.

Upon which side of the way is your working place?—On the right hand as you go from the bridge.

Bridgefoot-street is the same which is called Dirty-lane?—It is.

Is your place higher or lower than Bonham-street?—It is higher.

Is it higher than Marshal-lane?—It is between the two.

Do you know the prisoner?—I do, he was my apprentice for a year.

Do you recollect to have seen him on the night of this dreadful business?—I do, for I paid him in my office.

Do you pay him a subsistence?—No, I pay him half-a-guinea a week.

Was he at that time an apprentice?—He was.

Did you pay any other men that night?—I did, all of them.

Had you any assistant with you?—No, my clerk was out collecting money.

Do you recollect any person assisting you, or refreshing your memory, as to the number of men, or their days work?—No.

Did not the prisoner, as being your apprentice, assist you?—No, we do not allow apprentices to do those things.

What was the latest hour at which you saw him that night?—Since the bank-notes have been issued, we cannot find change for each man separately. We make out a docket, and give them the whole amount of the money to get change for themselves. I had some work to get ready for government, tumbrils and carts, so that the men did not leave me till between seven and eight o'clock, and I remained in the office for some time after.

Where was the prisoner during that time?—I do not know.

I ask you what was the latest time you saw him?—I cannot immediately say. It took me three quarters of an hour to settle the accounts of the week. I locked my gate, and with two other apprentices, went towards my home. I heard some shots and met a man running. I asked him where he was going, he said, "to fight;" I then saw the prisoner coming up,—“Jack,” said I, “where have you been?” he answered, “at the pay-table,” “are you paid?” “Yes,” said he. “You have got drunk” “No, sir,” said he, “Well then you had better go home;” he said he was going to his lodging.

What direction was the man going in, who said he was going to fight?—Towards Bonham-street.

What was the nature of the pay-table?—We make out a docket of the sums due to each man, and they go to some place where they divide the money.

That is, they go to a public-house?—Sometimes it is.

Where is the pay-table of your men?—I do not know, because they have no regular one; for when they get into debt, they leave one place and go to another.

Do you know where the prisoner lodges?—I do not exactly know the house, but I could say within a door or two of it.

Was the place you met the prisoner in at the same side as Bonham-street?—It was.

Does the prisoner lodge at Mark Carr's?—I believe so.

Where does Mark Carr live?—In Bonham-street.

Is it upon the right or the left as you go from Dirty-lane?—It is upon the right.

Do you know the deal-yard there?—Yes.

Whereabouts is that?—It is in the centre of Marshalsea-lane.

Is part of it in Bonham-street?—I cannot say, for there is a division.

But is there a deal-yard on the left side of Bonham-street?—There is.

What is the distance from Bonham-street

to Marshalsea-lane?—It is an hundred yards, as I believe.

How long have you known the prisoner?—About eleven months, during which time he worked with me.

What has been his general conduct and character?—He minded his business very well, and did not go out of the way in liquor.

James Rourke cross-examined by *Mr. Attorney-General*.

What countryman is he?—I cannot say, but heard him say he was a county of Meath man.

Was he with you, when you asked the man who was running, where he was going to?—He was not.

How soon did he come up?—In about three or four minutes.

Did you tell him what was going forward?—I did not; I had not time.

You bid him go home?—I did.

Was there not an attack upon the king's troops by the rebels?—There was.

Did it not begin before nine o'clock?—Not in Dirty-lane till half past nine; for the firing was first in Thomas-street: then there was a rush down Dirty-lane, and two soldiers were attacked by them. There were two pensioners in my house, and one of them who had drank talked loud, and I was afraid the people without would hear him, and I made them lock the door and go up stairs. The mob made the soldiers turn their coats, and there being some confusion, the men got an opportunity of deserting and ran down street, and as far as I could see they got away. I was looking from a garret window, and my house is the highest in the street.

Where was Col. Browne killed?—About sixty yards from my house.

Was that about nine o'clock?—I think not; there was some carriage stopped there, and my wife was shrieking about and dragging me from the window.

How many men have you working with you?—Fifteen.

Did they all return next morning except the prisoner?—They did, and worked ever since.

Had the prisoner time to go home before twelve o'clock?—He had not.

What! not in three hours from the time he left your place?—Oh! in that time he could have got home.

Jury.—Did the prisoner work all day, that day, with you?—He did, the entire day till six o'clock. He never lost time of a working day.

Margaret Carr sworn.—Examined by *Mr. Mac Nally*.

Where do you live?—In Bonham-street.

Do you follow any business?—My husband is a poor man, a carpenter, and works at a bench in the street.

Are there any lodgers in your place?—There were at that time.

Did a tailor lodge there?—There did.

What is his name?—Michael Finlay.

Do you now the prisoner?—I do.

Do you remember the 23rd of July?—I do; I was almost frightened to death.

Can you remember whether you saw the prisoner on the night of the 23rd of July?—I did indeed.

Where did you see him?—In my place.

At what hour did he leave your place?—In or about ten o'clock.

Do you know what brought him there?—He had left a pair of small clothes with the young man the week before, and he came about them.

Was the tailor at home that time?—He was not.

Did he return while the prisoner waited there?—No.

And upon that he went away?—He did.

Margaret Carr cross-examined by *Mr. Solicitor-General*.

Where is Finlay?—I believe at his work.

At home?—No, at journey-work, unless he gets a job now and then.

He was out that night?—He was at supper at Stonybatter, and the things were left at my place.

He has a room at your house?—He has.

And a bed?—He has.

He is alive and in Dublin?—He is.

What time did he come home?—He said he was stopped by a friend, who told him of the troubles, and that stopped him.

Then he did not sleep at home that night?—No, he did not.

What time had he been at your house that day?—Not after morning, when he went to work.

Did the prisoner call there any time that day before?—No.

But at ten o'clock at night he went to look for Finlay at your place, who was not there?—He did.

Did he go into Finlay's room?—He lodged in the same room where I was; I have lodging beds in it.

Were the breeches made?—No.

They were in the room?—They were.

He saw them?—He did.

They were not made, nor cut up?—They were not.

He saw that?—He did.

And yet he waited for the tailor at 10 o'clock at night?—He did.

Was it for Finlay he asked?—It was.

How long did he stay waiting for Finlay?—I cannot say, for I was so alarmed; he did not stay long.

Was he away before 10 o'clock?—He was.

And he had not far to go?—No.

Court.—You say you were alarmed; at what, pray?—At the business that was going on.

Was it going on then?—It was, for I heard the shots.

Mr. Solicitor-General.—Had it begun when the prisoner came in?—No, I think not; I went out for milk for my children, and heard the shots, and I returned and saw the prisoner there.

How long did he remain after the business began, as you say?—About ten minutes.

Jury.—How long was the stuff for the breeches left there?—Some day in the week.

What sort of stuff was it?—I think it was corduroy.

Had you any conversation with the prisoner?—I had not, I was so much alarmed at what was going forward.

Mr. Ball, on the part of the prisoner, proposed to leave the case to the jury, without troubling them or the Court with any observations.

Mr. Solicitor-General said, he thought his duty required him to observe upon the evidence.

The Court said, this was a case which required every elucidation, and would not wish on their part to put the life of a man in competition with their own trouble, or the time of the public.

Mr. Ball.—My Lords and Gentlemen of the Jury;—It appears from the conduct of the prosecutor, in insisting on his right of addressing you at this stage of the trial, though the counsel for the prisoner are inclined to waive that privilege, that the evidence given in behalf of the prosecution is of such a nature, as requires some observations in order to point and level it against the prisoner. The opinion of those who advise the prisoner and conduct his defence, is, that the evidence is of such a nature as does upon the direct view of it, unincumbered with argument and observation, justify them in thinking, that it was not incumbent upon them to occupy your time in discussing it, but they were willing to leave it to its own merits. And therefore the solicitor-general having determined to give the aid of his argument in support of the case made for the crown, I am now called upon, not to support a defence, which I feel in itself not to be sufficiently strong, but to endeavour to anticipate what strength the facts, which are admitted to be insufficient by themselves, may gain, by the ingenious observations of the counsel for the prosecution. I am therefore obliged to guess as nearly as I can, what course *Mr. Solicitor* will take to support the prosecution, though I am convinced that when the life of a fellow-creature is at stake, you will not be persuaded by any argument however ingenious—by any address however eloquent and persuasive—to find the prisoner guilty, unless the evidence, unaccompanied by any efforts of sophistry, and supported only by its own simple, unadorned, and naked tendency, shall inevitably impress you with a conviction of his guilt.—That no such clear, controlling, and imperative

force exists in the evidence, appears from the testimony of the counsel for the crown themselves, who plainly tell you, that without the force of their observations and argument, they do not think the evidence in itself strong enough to compel you to pronounce a verdict of guilty. I take it for granted, the solicitor-general will follow the attorney-general in his statement when he observed upon the trade and residence of the prisoner, and drew your attention so forcibly and so critically to the circumstance of his being a carpenter, and of his dwelling in Bridgefoot-street. He will take for granted, that you will assume that every man in that condition of life, and in that neighbourhood, was a rebel; that it was impossible that any carpenter in that part of the town, could be innocent; and he may infer from thence, that the prisoner being as it were by position—a rebel, living in the very centre of disaffection, surrounded by the materials with which the rebel armoury was supplied, skilled himself in the manufacture of those instruments with which they were armed, ought *prima facie* to be supposed guilty, and that at least, you should be satisfied with doubtful, weak, and slender evidence against him.

Mr. Attorney General.—I beg leave to observe, that I made the contrary inference.

Mr. Ball.—There is no doubt that, in observing upon the trade of the prisoner, a caution was used in drawing the inference, which reminded me of the advice given to some persons who were inflicting summary punishment upon a bailiff,—“Do not nail the man’s ears to the pump.”—The attorney-general did wisely and prudently give you a caution; but before he gave you the caution, he administered the poison. I cannot conceive why a gentleman of his reach of understanding should begin by telling you, that the prisoner was of a trade, and inhabited a neighbourhood, both of which had made a very conspicuous figure in the recent insurrection—namely, that he was a carpenter, and resided in the neighbourhood of Thomas-street—unless with the view of making some impression against him. And I say, I expect and fear, that the solicitor-general may think, that in a case of this kind, where the general crime is notorious, and where peculiar suspicion may be applicable to the prisoner’s trade, condition of life, and residence, you should be satisfied with slighter evidence than would be necessary to convict a man of an unimpeached calling, of a different rank in life, and who resided in an unsuspected neighbourhood. My reply by anticipation is, that you are in no one case, where the life of a man is at stake, to be satisfied with slighter evidence than you would in any other. You are to expect, on this great and momentous occasion, that degree of evidence which in any ordinary case would be necessary to satisfy you; and I entreat your pardon, if I endeavour to fortify your minds against a prejudice that may possibly obtrude

itself upon you—a prejudice arising from the peculiar nature of the crime with which the prisoner stands charged—a crime of the highest and blackest guilt—a crime involving in its completion your own lives and those of your families, your ease, your properties, and your peace of mind. You are not trying a man for a murder by which a stranger lost his life—a robbery by which another man lost his property—or a burning by which a distant house with which you had no connexion was destroyed; but you are trying a man for an offence, by which,—if he was guilty,—yourselves, your wives and children, your mansions and your fortunes, were to have fallen in one common ruin. Exalt, I beseech you, your minds to that lofty and commanding level, from whence you may, for awhile, look beyond those dear and alluring objects—view and contemplate from thence with a calm and steady eye, a serene and undivided attention, that awful duty which you are called upon to discharge; forget the magnitude, and regard alone the certainty of guilt. The obligation of your oaths, the duty of your office, the responsibility you owe to the prisoner and to your God, are not less binding on your conscience now, than if you were trying the smallest of those offences on which the policy of the law has reluctantly inflicted the punishment of death. If in the case of a common robbery, or even an assault, you must have witnesses above all exception to prove the direct fact; you must demand the same evidence in a case, where even the safety of the state, or yourselves and families, is directly attacked. It is not because the general system of the evidence is true, or the preliminary facts unhappily too notorious, that you will confound in the general mass of truth, integrity, clearness and precision, such part of the evidence as is devoid of all these qualities; and because much is proved, you will not infer more: you are to separate the evidence; you are to adopt that which is true; you are to reject that which is not so, or which is even doubtful. What is the character of truth? It is clear and uniform. The witness who falsifies in one part is not to be believed in any; so that you are well to consider and weigh the evidence which is adduced to affect the prisoner; you will compare it, and scrutinize it with the same principles of investigation, and the same guard of caution, as you would on any ordinary accusation.

To have been in a deal-yard at that hour of the night, is not a crime of itself; it is a fact that might happen to the most innocent man, if in the situation in which the prisoner alleged himself to be; was it a forged and fabricated story? if it was, the prisoner must have been instantly detected by ordinary prudence, by merely crossing the way in Bonham-street, and making the inquiry which he challenged, which he endeavoured to provoke by his open and candid disclosure, but which unhappily for him was not made: he was a single man

and alone, and escaped into that yard, as he alleged, to avoid the pikemen; he had good reason to avoid them; he was the servant of a man whose conduct was such, that he had preserved a whole body of workmen from the dreadful and almost epidemic contagion; a man who was possessed of the materials necessary for treasonable weapons, and yet, during the whole time of the conspiracy he never had missed so much of his stock as would have made a single pike, nor has there been any one of his men a subject even of suspicion, and therefore the prisoner was not likely to expect much mercy from the pikemen if he fell in their way. Now what is the fact with respect to the prisoner, as you have it from clear and indubitable evidence, which you cannot but believe? For the principle of inquiry into truth which common sense and reason afford is, an examination upon the oath by particular personal interrogatories; if that shall cease to be the principle upon which truth is investigated, I should be glad to know which of you could produce evidence to resist a charge made, if by withholding your credit from an unimpeached witness, whose evidence is clear and consistent, you shall endanger the foundation of judicial evidence in general. What is the evidence of Rourke? The prisoner had never been a single hour absent from his work, previous to the 23rd of July. On that day, from six in the morning till the hour of receiving his wages, he regularly attended. Circumstances arising from the distress of the times, and from that which is the source of all our calamities, had occasioned some degree of inconvenience in the payment of workmen; the consequence was, that they were obliged to assemble at certain places, for the purpose of dividing the money according to their several rights; therefore the whole of these fifteen innocent men went together from their work-yard—I say innocent men, because not one of them was absent, nor has fallen under suspicion; the prisoner went with them. What did he do afterwards? In a reasonable time after the partition of their wages, he was seen upon his return by his master, who was known to be a loyal man in the employment of government. What circumstances occur? A man runs by, saying he was going to fight; whereupon the witness addresses the prisoner, and asks him, are you going to join this foolish business? thinking it was a boxing match: he saw the prisoner return, and on the very spot where he ought to be, on his way towards his lodging; if he suspected any unlawful business, he might easily detect him. The prisoner walked quietly along, not running in haste like the former person, who was going to fight; his master upbraids him for being drunk, which the prisoner denies, although I suppose you know, no man keeps a pay-table without distributing drink among the persons who assemble there; however, after this interview with his master he proceeded homeward. The veracity of the witness in this re-

spect you cannot doubt; he then turned up a street directly between his master's house and his lodging; for what? for the innocent purpose of inquiring for some of his clothes, which he had left at a tailor's some days before to be made. It has been insinuated that the tailor was a rebel; I do not know whether he was or not; but if he were, the prisoner did not know it, for the prisoner would not have gone to look for him in his lodging at a time when all the rebels were assembling according to their different destinations; he inquired whether the tailor was at home, but the counsel, hearing that after he had got his answer he remained some time longer at the tailor's, ask, did he stay till the breeches were made? Why, gentlemen, he waited, it is true, some short time, in expectation of seeing the tailor.

Then it is objected, he had only a few yards to go home: it is true; but it appears when he came out of the house where the tailor lodged, that Bridgefoot-street, where he lodged, was filled with rebels, and he immediately fled from them into the first place of safety that occurred, the timber-yard, over the wall of which he went. You will observe that the rebels, who had been collected all together, were repulsed by the king's forces, and if the prisoner had been associated with them, it is natural to suppose that some of his companions would have taken refuge with him; therefore his being found alone is a strong reason to show, that he did not act with any party of men, but that the truth was, as he alleged, he took refuge there to avoid the hostility of the pikemen.

Gentlemen, you will observe what I have already stated, that it is impossible to produce direct evidence of that fact, but you will inquire whether that fact be inconsistent with the prisoner's conduct, and whether it be a fact capable of proof. You are not to infer, that because it is not proved, therefore it is false; because unless he knew some of the forces of the rebels, and could produce them here, to show that he fled from them, it is impossible to prove the fact. But what has he done? He stated that fact to the witness, lieutenant Coultman, at the moment of his arrest, giving him an opportunity to contradict it, so that no false tale could have availed him. What did he tell the officer? That he fled, because he was in danger from the rebels. He told him where he lived, where he had worked that day; and it appears he was dressed in the way of his trade, like a man recently from his work, with his apron upon him. He told the witness he had gone into Bonham-street, for the purpose of inquiring for his small-clothes, and he pointed to the very house where he had been. What then is the best evidence that could have been produced against him, if he were guilty? I will state what would have been the best evidence in that case: the officer might have gone to the house to which the prisoner had

referred, and might have confronted him with the people there; if his story were false, it would then have been detected on the spot; and instead of this being a case upon which you would have to exercise your judgments, or the discriminating powers of your understanding, your office would be merely ministerial, you would have nothing to do but hear the evidence and the indictment, and pronounce your verdict.

By this defect of inquiry which ought to have been made, and to which the prisoner threw himself open,—a defect not of his, but of those acting for the Crown,—is he now exposed to any difficulty, because if a contradiction and refutation of his assertion would have subjected him to inevitable conviction, so the corroboration of it by the people of the house would have entitled him to an instantaneous acquittal. It would have done more; I will take upon me to say, from the intelligent mind of lieutenant Coulman, that if he had made the inquiry, and found the prisoner's representation to be confirmed in all its circumstances by the people of the house, he would have instantly discharged the prisoner.

Now, gentlemen, see what is the evidence tending to support the accusation against the prisoner. Is there any other circumstance of guilt, except the evidence of the soldier, who swears that he saw a pike in the prisoner's hand, and upon that single fact, which is the whole strength of the prosecution, is to be found, in my opinion, the most deplorable weakness: if he had not the pike, there is no more reason to impute guilt to him, than to any one of you, or to any man in the court. Who is it tells you the prisoner had a pike? He is a man who has either told you a deceit, or intentional falsehood, or who has so confused and so uncertain a knowledge of the facts, that he is unable to give an accurate statement of them. Which of the witnesses will you believe? Will you say that what lieutenant Coulman stated is not true? If it be not true then no pike was found in the yard at all, and therefore the fact of the pike utterly falls to the ground. Are you prepared to say, that lieutenant Coulman's evidence is true? If so, then you must disbelieve the soldier, because lieutenant Coulman contradicts him in material points, and the soldier is the only witness that attempts to bring home the charge of the pike to the prisoner. Lieutenant Coulman saw a pike, but he does not in any way bring that pike home to the prisoner. It was lying in a large yard, where many pikes had probably been that evening, for he supposes that all the pikes which he saw in Bonham-street, had been thrown out of that yard, and at all events the soldier swears that the pike which Coulman saw, was not the pike which the prisoner had held, for he, the witness declares, that he himself threw the prisoner's pike over the wall, and he, the only witness to any material and con-

clusive fact against the prisoner, swears positively that lieutenant Coulman saw no pike, for that there was no pike in the yard after that officer and the other soldiers got into it. Thus he is flatly and directly contradicted in an essential point by lieutenant Coulman. But attend him farther, examine his evidence step by step, and see whether you can give him credit in any part of his statement.

Now, gentlemen, see what his evidence is; he says that there were large pieces of timber lying against the wall in Bonham-street, and that he saw the prisoner running over it, and that he, the witness, went after him; upon his evidence, taken altogether, the guilt or innocence of the prisoner rests; and I will shortly analyse that evidence. He saw the prisoner run over the wall with a pike in his hand; he runs upon the wall after him; what is his account then of the transaction? I intreat you to attend minutely to his expressions. Does he say, "the fellow I saw with the pike is here still?" which is the very form of words he would have used, if the fact be true. No, but he cried out, "here is a rebel, and he has a pike in his hand." These are the words he would have used if he had unexpectedly seen a man for the first time, not if he had again seen one whom he knew to be there, and whom he had seen immediately before. They are words of discovery, not of ascertainment; the witness then says he drew his bayonet in order to defend himself, and you will remember, gentlemen, that armed with that bayonet he went and took the prisoner lurking under the timber, that the pike was within a yard of him, and so cautious was the witness that, though the man sunk as was described, under the root of the tree, and there was no danger from him, and although the witness had no arms but the bayonet to defend himself against any others, he took up that pike, and to be more upon his guard, threw it over the wall, lest he should be assailed by other rebels, while he was opening the gate as he was desired by his officer. Observe, gentlemen, how circumstantially he tells his story—he states to you his fears, the nature of them, and the means he took to avert the danger. If he has stated those circumstances falsely, he has done it through design; it is impossible he could invent them through forgetfulness. A man may through weakness of memory forget what he has known, but cannot from the same cause remember what he never knew. I will undertake to show you, that he has invented all those facts which he has detailed with such precision. First, the story the soldier tells is in itself improbable; for, gentlemen, according to my reasoning, if one person whom I was pursuing should throw away his pike, I would rather use it, as putting myself upon a level with any other person who might attack me, than throw it over the wall: but the fact is not corroborated by any other

evidence, which, if it were true, that the pike had been tossed over the wall, might easily have been done, for all the party waiting at the outside must have seen it. Was there any other pike there? No, says the soldier. "What became of it?"—"I threw it over the wall before lieutenant Coulthman came in." What is lieutenant Coulthman's evidence? That he found a pike in the yard; he said he did not find it with the prisoner, nor near him, so it could not be the pike of the prisoner. The only witness that attests the fact of the pike being in the prisoner's hands shows it was not the prisoner's pike that lieutenant Coulthman saw, because the prisoner's pike was thrown over the wall, and therefore if a pike was found afterwards in the yard, as lieutenant Coulthman says, it was not brought in by the prisoner; if not, who brought it there? It is utterly inconsistent with the prisoner's case, that he could prove it, but beyond all manner of contradiction the one found by lieutenant Coulthman was not the pike of the prisoner; and give me leave also to say, that this timber-yard where the prisoner took refuge, does not appear to be a dépôt of pikes; finding but the one pike, as lieutenant Coulthman says, together with the doubtful one spoken of by the soldier, is strong evidence to show that it was not a dépôt. Upon the whole, which of the witnesses will you believe—lieutenant Coulthman or the soldier? Will you be asked to say, it is of very little consequence, and that it makes no difference whether there was one pike or two pikes, that the prisoner had a pike and that is sufficient? No, gentlemen, this cannot be expected from you: if you cannot speak with certainty, you cannot convict: the criminality of the prisoner rests upon the identity of the pike; which then will you believe?

Can you say that the pike which he had was the one which was found by lieutenant Coulthman? No; for that was not near him, nor is it pretended that the prisoner knew any thing of that pike; besides, the soldier denies and falsifies that account by saying, he threw the pike which the prisoner had into the street; the evidence at best is calculated to puzzle and perplex you, and if you give implicit credit to such contradictory, vague and uncertain accounts, unless you cut the gordian knot, you cannot satisfy your minds; but, gentlemen, you will not do that violence, when a plain and obvious rule of common sense will gently untie and unravel the difficulty—namely, that a witness contradicted by others equally entitled to credit, must not be believed;—that no man's life should fall beneath such evidence;—that it is better one hundred guilty persons should escape, than one innocent person suffer.

I have, however, gentlemen, farther observations to make upon the evidence of the soldier, as contrasted with that of the officer, which will, in my opinion, strongly corroborate (if they have any weight at all), those

which I have already made. There is one other important circumstance which I think it necessary to observe upon—it is an unconnected, single, detached fact—nothing more is necessary than barely to state it—speaking trumpet-tongued that the evidence of the soldier ought not to be believed; he either forgets the transaction *in toto*, or he forgets most important facts, and those facts of a nature to make a strong and lasting impression upon his mind—because clearly and immediately connected with his own personal safety—because, being connected with his own self-defence—the strongest passion of nature—their impression must be indelible. He admits that there were fears for his safety—but he forgets that it was the officer who first suggested these fears. He admits that he was armed for his defence, but he forgets the nature of these arms. The officer tells you, he armed the soldier with a pistol—the soldier tells you that he armed himself with his drawn bayonet only. The soldier tells you he threw away the pike, lest some unseen rebel might seize it, because he had no arms that could resist a pike. But, gentlemen, he had arms that might have defended him against a pike—he had a pistol—and that fact he denies.

I do not wish to cast the stigma of intentional falsehood on any witness brought forward by the government of the country. That he has sworn falsely cannot be denied; can this falsehood be accounted for in any way favourable to the witness? The fate of the prisoner is not connected with this consideration; the credit of this and all the late prosecutions alone is at stake on the question. I sincerely hope that those falsehoods and contradictions have arisen from the confusion of the man, his inaccuracy of recollection and judgment; but are you, gentlemen, to hang a wretched prisoner, because a man tells a story comprising a number of facts of which his recollection, his judgment and his observations as to the persons, time, and circumstances of the transaction have been confused, indistinct, inconsistent and contradicted? Is there not in all this something upon which you should long and long hesitate, before you would consign an individual to death? In your anxiety that a guilty man should not escape, do not forget that it is your duty also to take care that an innocent man shall not suffer. Do not, gentlemen, suffer that humane, wise, and just principle of the law which I have quoted to you before, and to which I now allude, to be perverted.

If the period wanted examples, if this unprecedented outrage, at which human nature shudders and revolts, were unchastised and unrevenged, that might have some weight upon your minds; were it a case of a single murder, and a single person were charged with it; were it a conflagration of the city, and only one person charged; were it the overthrow of the government, and a single culprit

alone charged with the offence, if it were consistent with human regulation, let that man suffer; let the most scrupulous caution be applied to prevent the possibility of his escape, if guilty. To have crimes committed and no persons to undergo punishment, might give dreadful encouragement to similar outrages; but here multitudes have been taken, not under equivocal circumstances: many have been tried, and their crimes brought home by a body of evidence connected and dove-tailed together. Examples have been made already, others are yet to come; no temptation to overstep the cool and cautious rules of criminal jurisprudence presents itself. Some have confessed their guilt; but if there were no other, if the prisoner were the first, and was to be the last to be accused, there is something in the case that will revolt and terrify the mind of a jury before they convict him. But he is not the last, he is not a necessary victim: great examples are yet to come: and may it be propitious to the country, to show that as the vigilance of government has detected and defeated this conspiracy, and brought the guilty to the bar, there to fall under the sword of justice—yet if a man have an honest case upon his own evidence, if a weak case be made against him, arising from the defect of the evidence for the crown, he has as fair a chance of acquittal as the man of decided guilt has a certainty of conviction. For what purpose is conviction desired? Not to add to the number of examples, because the sword of justice need reach to but a small number, to make good and salutary examples; but it is necessary to let the remaining guilty see, that their best defence is to come forward and make a full disclosure of their crimes, and their accomplices; and therefore let it be known, that the guilty man must suffer if he does not reconcile himself to government, and let it be seen that those sanguinary, barbarous, vehement, and violent men, who would hurry on to the destruction of their fellow-citizens, are plunging themselves in inevitable ruin; but let it be also felt, that none but those who have been convicted by clear and unsuspected evidence, and not the man upon whom suspicion only can attach, shall fall beneath the law. Be severe, but be just. The law of rebels is violence—suspicion with them is proof—accusation is conviction—and their punishment is murder. Terror and passion preside in their councils—justice and mercy are strangers: Show them the awful contrast between usurped and legitimate authority—demonstrate to them and to the world, by your verdict, that coolness and deliberate wisdom, candid investigation, dispassionate inquiry, and impartial decision, are the attributes of that law, at which they have contemptuously spurned.

REPLY.

Mr. Solicitor General.—My Lords, and Gentlemen of the Jury: It falls to my lot to con-

clude this trial, by a few observations upon the evidence; and I should not pay that respect to Mr. Ball which he is entitled to, unless I assigned the reason of my troubling you. Gentlemen, you will please to recollect, that when Mr. Mac Nally addressed the Court, he was proceeding to observe upon the evidence, and upon the contradictions between the witnesses; but he was told, that duty should be reserved for Mr. Ball, upon which he desisted, after a pretty strong impeachment of the evidence. But when the opportunity occurred, Mr. Ball seemed to decline it, and therefore I thought it right to acquaint him, that I should observe upon the evidence—to show, that the evidence was free from stigma, and that this is as clear and conclusive a case as any which has come before the Court. The party who wished to avoid explanation, was declining to speak to the evidence, and I do not wonder that he did so; because it will appear, that there is no contradiction between the witnesses in any material point: and I shall submit to you, that the case made by the prisoner shows his own guilt, and irresistibly corroborates the case of the crown.

The first part of the evidence which relates to the prisoner (not to trouble you with the facts concerning the rebellion, because they are not denied) arises from the transaction of lieutenant Coultman, attended by others, advancing up Dirty-lane. The situation of the leading persons was this:—Mills held a flambeau beside the officer—Gallagher the soldier was advanced—I mention this to show, that it was impossible any man seeing this party approaching, could mistake them—the foremost man was dressed in a military uniform, the second was an officer in his regimentals, and there was a light, which could show at a distance what they were. Therefore, it is impossible they could be mistaken for any other party, and that is important, as meeting the attempt which was made by Mr. Mac Nally, to account for the flight of his client; and in addition to this, though the other persons were dressed in their ordinary clothes, and not in uniform, yet they had cross-belts on, which are more distinguishable at a distance than the colour of an uniform.

When the party arrived at the corner of Bonham-street, Gallagher swears he saw a man running, and that he leaped over the wall. That must have been the case; because he would not have noticed the wall unless he saw something that way; neither would he have been induced to quit his party, unless something was presented to his view which required investigation. This demonstrates that he could not be mistaken in that respect; when he got upon the timber, he exclaims, "Here is a man with a pike." Mr. Ball relies upon it, that the soldier's testimony is to be considered solely by itself. But you will observe, that the other witnesses confirm him; they agree that he did exclaim, "There

was a man with a pike!" What object could the soldier have had in stating a falsehood at that time? It was a sudden exclamation, when there was no time to deliberate upon plan or contrivance, without any motive of falsehood; it was in the moment of danger, when nothing but truth was likely to escape his lips. There was no other person found in the yard, save the prisoner; and that he was the man who jumped over the wall upon the approach of the military, there can be no doubt upon any reasonable mind. Then the whole difficulty which has been attempted to be raised is the transaction immediately following—in the account of which, there, in truth, is no contradiction; but even if there were, it is of no consequence in the case. The finding of the pike, one way or the other, is perfectly immaterial to the point in issue, namely, the identity of the man; and this enables me to apply a rule which was stated by Mr. Ball himself, upon a former case, that trifling inconsistencies do not defeat the testimony of witnesses, but rather serve to corroborate them, because they show that the witnesses do not come with prepared stories, but declare the truth, and slight trifling deviations appear, according as the mind or recollection of each particular witness was affected.

But I do not rest upon that: I shall show, that there was no contradiction whatever. Two points of contradiction have been relied upon. The soldier says, he did not get a pistol when going over the wall; the officer says he did. But it appears upon another occasion, in the course of the same night, the soldier acknowledges he got a pistol, and that was, when he entered the dépôt; for it appears, that being a courageous man, he was foremost in every danger, and the transaction of the pistol having taken place might be mistaken by the officer, and not by the soldier, because he was the actor in the business. The pistol was not necessary in the deal yard, because the prisoner threw away his pike and hid himself before Gallagher jumped down. But let which of the witnesses he mistaken, or whether there be a mistake or not, it is not material, because the main question is, as to the identity of the man.

The next contradiction relied upon is, the account respecting the pike. One of the witnesses states, that it was thrown over the wall; the other states, he found a pike in the yard: now, gentlemen, consider their situation. The soldier was within the yard, looking with attention towards the prisoner and the pike, while those without were collected at the gate, waiting for admission—so that the pike might have been thrown over the wall without the officer perceiving it, and it might have been found there by the officer when he was giving the prisoner up to another party. Now, what could induce the witness to tell a falsehood in this respect? If the pike were found in the yard by the officer, it might have been brought in by some of his party and dropped,

when they were dragging the prisoner from under the timber. Look at the conduct of the soldier; is it probable that he would falsely swear away the life of the prisoner? It was the soldier's clemency which saved the prisoner at the moment of his arrest. He would have been sacrificed upon the spot by the warm zeal of the subject; he owes his existence at this time to that soldier, whose character the counsel are instructed to defend—a man who exerted his clemency at a time of great heat and confusion, amidst which he preserves the life of the prisoner. This, gentlemen, is a powerful circumstance to weigh upon your minds, and to induce you to give credit to that man. It is not an important point upon which this variation appears, but this fact is certain, that a pike was there, and there is no way of accounting for it but by the prisoner having had it. That fact is confirmed by the testimony of lieutenant Coulman; he says, the soldier called out, "Here is a man with a pike." Can you believe, in saying that, he concerted a falsehood before so many who could detect him in a moment, when there was no opportunity for concert or design? And therefore, gentlemen, I submit, that there is no important contradiction whatever, and that the material fact is strongly confirmed.

But the learned counsel has pressed upon your minds the case of a robbery, and two bundles of clothes found; but where is the analogy? The contradiction does not apply to that which is the subject of the guilt—here the identity is ascertained beyond all question—for the prisoner was found upon the spot, and he has been in custody ever since. He fled from the party upon their approach; that he admits; and that he had a pike is equally clear, and whether it was found near him upon the ground, or whether it was thrown over the wall is utterly immaterial. The main fact is not contradicted, but is confirmed by the witnesses for the prisoner; for it is admitted by him, that he fled over the wall, and the only question is, what was his motive for so doing? There is no dispute as to his identity or his jumping over the wall—the finding of the pike is not contradicted—and the only question is, what was his intent in having it, and what could have induced him to fly from his majesty's troops. The prisoner found it necessary to account for his conduct, and the evidence produced confirms the case of the prosecution, and leaves no reasonable doubt of his guilt.

The account given of him is, that between seven and eight o'clock he left his employer's house to get his share of the money paid upon the workmen's account. At nine o'clock the rebels were arming themselves, within a few yards of the spot where this employer lived, and their conduct was such, that no loyal man could escape their fury. Mr. Wilson, the peace officer, escaped by an intrepidity which every man must admire.

colonel Browne fell a victim to their rage. This was before nine o'clock. Can you believe, with all these circumstances of rebellion—which affected a loyal man, the prisoner's employer, to such a degree, that he fled to the upper part of his house—that the prisoner could remain abroad if he were an innocent man? What would his conduct have been if he were a loyal man? Would he go to the tailor's to seek for ornaments to decorate his person upon the following day? Could any thought occupy his mind but that of saving his life? His master warned him to go home—he did not want the caution of his master to apprize him of what was going forward—the scene of mischief was within a few yards of him. But instead of going home, he goes, as it is alleged, to the lodging of the tailor; at the very hour when the rebellion was raging, he goes in search of an article of dress. The tailor was not at home that night; why is he not produced, to show that he was engaged to make the article, or promised to have it made? Because he might appear to be one of those who had the audacity to raise their arms against the government, and would damn the side for which he was produced. Does the prisoner go away when he is informed that the cloth is not cut up, and when it was idle to expect, that the breeches could be finished? No, he waits ten minutes for the tailor, as if he were to regulate his conduct for the night—he is left in the street from ten o'clock till twelve, when he is found and taken—how he spent these two hours, during which no loyal man could appear, is not accounted for. Has he produced the persons in whose house he lodged, or any circumstance whatever, to occupy the time which is unaccounted for?

Let me ask you, what would have been the conduct of a loyal man, having no more than forty or fifty yards to go? Observe also the situation of the family where the tailor lodged; they were so terrified, that they could not converse with him; after he left the house, he continued two hours unmolested, without any injury offered to his person; could any loyal man continue there such a length of time? What was his conduct when he saw the military approach? He saw the uniforms of some, and the cross-belts of others; he flies: where? Into a deal yard, to which he might have fled, if he were a loyal man, at a much earlier hour, and with the same kind of weapon, which all the other rebels had. So that coupling his evidence with that which was given on the part of the crown, it corroborates the latter: if he alleged he had been compelled, he might have made a more feasible case; but the circumstance of his flight, would have defeated that case; and his case now is, that he was a loyal man, and it appears he remained two hours among rebels without going home, which he might easily have done.

Gentlemen, before I sit down it is necessary
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to make one observation upon the conclusion of Mr. Ball's speech: he solicits the acquittal of his client upon a ground which, were I to pass unnoticed, and without censure, I should not discharge my duty. He calls upon you to show mercy to this man because it is not the first trial; but that if it were the first trial, you might overleap the laws of the country for the sake of what he calls an example; that there you might convict, though the evidence was not satisfactory, but here you should acquit although it is conclusive.

Gentlemen, I trust that no jury will consider any thing, but what constitutes part of the case in evidence. You are not to consider the consequences; or whether others have been convicted, or may be convicted; you are sworn to try according to the evidence, and a true verdict give according to that evidence. The consequences suggested may influence a politician, but should have no effect in the jury-box. Lay your hands upon your hearts, and ask yourselves whether you can say you have a rational doubt that the prisoner was associated with rebels against the government, and that you cannot account for his conduct upon any other proposition. If you have a doubt, give the prisoner the benefit of it, provided it be such as reasonable men may entertain. If you have no doubt, you have a solemn and sacred duty to discharge, to do justice to your country and to yourselves, rendering a most essential service to the cause of humanity by a verdict of guilty, showing persons of this description that when they embark in desperate outrages, the sentence of the law will punish them for their offence.

SUMMING UP.

Lord *Norbury*.—Gentlemen of the Jury:—I am glad, for your sakes as well as my own, that this case has been ably spoken to on both sides. I will not take up many minutes of your time in directing your attention to the matter which you are to try. The indictment is for high-treason and the overt acts which form the immediate object of your inquiry are, that the prisoner waged and levied war, and armed himself with a pike, and did associate with a number of other persons in military array; these overt acts are stated in the first count, which is for compassing and imagining the death of the king; and there is one count upon the other branch of the statute, for compassing to levy war, stating as an overt act, that he did actually levy war. I shall come directly to the evidence, because there is no man in the community who does not know the tendency of these prosecutions. Though you cannot take into your consideration the circumstances of other trials, yet the opening of the case, and the arguments of the counsel on each side, have directed your minds to what is your exclusive duty, namely, the inference to be drawn from matter of fact. No doubt remains of that which is the primary consideration, namely,

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that there did exist a rebellious insurrection, and a levying of war in the city of Dublin, at the period in question, and therefore it would be wasting your time to detail the evidence upon that. I shall come therefore directly to that which is of difficulty enough to engage your attention, and without directing you to any conclusion, I shall endeavour to assist you to form that which may be the right one.

The first witness in the case was Mr. Wilson, whose evidence establishes one general fact, that there was a rising that night, and that the insurgents were armed with pikes; they assembled in Thomas-street, and went down Marshalsea-lane, where was afterwards found a general dépôt, containing implements of destruction of such variety and extent, as leaves no doubt for what purpose they were prepared. The existence of the treason and conspiracy being thus established, the principal question is, whether the prisoner was concerned in it; because you must be satisfied, before you find him guilty, that he did take some active part in forwarding that conspiracy.

In order to bring the guilt home to him, Lieutenant Coultman describes his going after twelve o'clock of the night in which the disastrous events are sworn to have happened, with a party amounting to twenty-eight, towards Bonham-street, and Dirty-lane; at the entrance of Bonham-street, where there are three deal yards adjoining Marshalsea-lane, they found a machine of timber, which was described to you as calculated for the general purpose of destruction: the party moved all together, some of them were in military dress, and one of them held a flambeaux in front. You are to judge from these circumstances, whether these appearances could intimate to any person whom they might approach, of what description they were; of that party one private in military uniform appears to have been somewhat advanced more than the rest, that was Gallagher, and there seems to be no doubt that he made use of the expressions which called upon the attention of the rest of the party; he exclaimed that "there was a rebel with a pike; that was when he approached the timber-yard in which the prisoner was afterwards found. Some timber was also piled against the wall, by which the soldier climbed and got access without opening the gate; when Gallagher had ascended this timber, and looked over the wall, he exclaimed, "here's the rebel, he is throwing away his pike and hiding himself." Gentlemen, you are to judge whether this exclamation addressed to the party behind him, was so loud that the prisoner could hear it. When the gate was opened, the party entered, and saw the prisoner concealed, all but his legs, by which he was dragged from under the timber. There was no person with him at the time, and here you will have much to investigate. Lieutenant Coultman says, he got a pike within a yard where the prisoner

lay, and Gallagher says, that he threw the pike which the prisoner had over the wall.

[Here his lordship minutely recapitulated the testimony of Lieutenant Coultman, and observed, that it appeared from his cross-examination, that the prisoner offered to show his place of abode, and that he had been at a tailor's, whose place he pointed out, at the time; and his lordship then stated the testimony given by Rice and Gallagher, and then continued his observations to the Jury.]

Gentlemen, you are to judge, whether the person whom Gallagher first saw, was the same person whom he saw afterwards in the timber-yard: the pursuit was made by the witness over the timber to the wall, and a consequence of that pursuit some person was seen. The witness called out, that he saw a man with a pike—that he was letting it fall, was diving under the timber; whether the witness could be so inspired as to pursue without seeing a party fly, you are to judge; the pursuit and the finding of a man seemed to be connected with the preceding circumstance of seeing a man run: the officer followed, and the fact of finding the prisoner is incontrovertible. Gallagher says, he threw the pike over the wall; in that he disagrees with Lieutenant Coultman; whether that circumstance did not draw the officer's attention, if it happened, or whether it escaped his observation, will be for you to consider, because in all cases of this kind, it is natural to catch at every circumstance where there is even an apparent contradiction. But I am bound to tell you—what may perhaps occur to yourselves—that it is extremely possible, that a witness intending to tell the whole truth upon the subject-matter, concerning which several witnesses have been examined, may differ in collateral points, which are not essential, and do not bear upon the main subject of inquiry: but still, if the witnesses do differ, it is a matter which ought to be taken into consideration. The sound judgments of rational men will inquire, whether the fact upon which the difference arises, be essential and important, and of sufficient magnitude to mark a fallibility that can be relied on, or a disposition to falsehood, which should make you reject all that he has sworn. There is a variance marking the fallibility and a defect of memory in one witness or the other, and if such incorrectness appears, even in collateral points, as would induce you to doubt that part which is essential, undoubtedly it will weigh much in the conclusion that you shall form.

But if it arise from equivocation in either witness, it bears close affinity to deliberate falsehood, and it ought to go strongly against the credit of the witness. You will consider, however, whether this difference between the witnesses arose from a different view of the transaction, in a matter that seemed not essential to the case of the prisoner, and by no

means illustrative of innocence or guilt, and whether from a frail recollection by one witness, and a clear recollection in the other; or whether there was intentional falsehood in either. There are various gradations in accuracy of account and consistency of detail, from whence you are to draw the inference, as to the intention of the witnesses, and the degree of credit their evidence should have.

It is for you to judge upon all the circumstances of the case; but the most important fact for you to determine is, whether the prisoner was armed with a pike, in furtherance of the treason charged upon him; the fact of seeing him with a pike, rests upon the testimony of Gallagher; who, upon pursuing the prisoner, cried out, "here is a rebel with a pike," and whether that was said in the hearing of the prisoner, you will also determine. You have a serious task, when you are obliged to draw inferences from facts; and there are some facts upon which there is no controversy, as they rest on the concurrent, and consistent testimony of the witnesses to them; who swear that the advanced man of lieutenant Coultman's party, cried out, "there's a rebel with a pike!" and immediately commenced a pursuit, in which all the party join; the pursuit continues to the deal yard, where the prisoner is found at the instant, concealed under an heap of timber; a pike is found close to the place of his concealment, and on searching the deal-yard closely, no other person is found there. You have heard from the witnesses, how the deal-yard was connected with the dépôt, which was near to it; you have heard the statement which the prisoner made to account for his situation; I have mentioned the contradictions which have been relied upon, leaving it to you to determine finally upon them. I will go to that which has been set up as a defence.

[Here his lordship stated the evidence given by Rourke, and the other witness on behalf of the prisoner.]

This evidence is of importance, not only in point of character, with respect to honesty, and continued laborious industry, but also to the merits of the present case; because it is not probable, that the prisoner had bestowed much of his time, in forming this general plan of conspiracy, which has been deeply laid, if he was regularly engaged in laudable industry; but it is my duty also to tell you, that although a man may not have been engaged in forming schemes which require much time, yet if he joins them afterwards, he may be equally guilty with the others in contemplation of law. I could have wished, that upon such a night, so eventful, attaching upon the scene where the prisoner lived, having been cautioned by his employer to go home, and having been apprized of the mischief which had begun to rage, before he left Mary Carr's house, he had so far taken care of himself, as to be able to account in any

natural manner, for what he was doing between nine and twelve o'clock. I wish for your satisfaction, that it was capable of proof; perhaps it was owing to the agitation of the time, that he lurked in some hiding place, where he remained, though he cannot prove it. I could wish he had brought the people of his lodging, for the time is of considerable extent; he was out at a late hour, and no account appears in evidence, but of the time he passed at the tailor's lodging, and the situation in which he was afterwards found. But it is for you to determine, whether the overt act charged against him, has been satisfactorily proved; you must be satisfied, that he bore a pike actually for the purpose of rebellion. It is impossible for a judge to presume to encroach upon the province of a jury, but it is his duty to say, that if you have a rational doubt, which prevents you from drawing a necessary and just conclusion, from all the circumstances of the guilt of the party, you undoubtedly should acquit him: on the contrary, if you see an accumulation of facts, carrying conviction to your minds, that this man was active in the rebellion, you will convict him. I shall now conclude, with again bringing to your recollection, that a doubt, rationally existing upon the case, should draw from you a verdict of acquittal, and I shall beg of you to retire with minds, cool and free from preconceived impressions, which belong to the history of the times, but which do not arise from the evidence of the case.

Lieutenant Coultman was called again, at the request of one of the jury, who examined him.

Did you search the timber yard, so as to see whether there was any other man there? —I went over the yard with my sword, and some of the men with me, as accurately as possible, and did not find any other man there.

The jury retired, and after deliberating for twenty-five minutes, returned a verdict of guilty; at the same time recommending him to mercy, on account of the character given of him by his employer.

He was then remanded.

On Monday the 5th of September, the prisoner was put to the bar, and the attorney general prayed judgment against him.

Lord Norbury then proceeded to pronounce the sentence of the law—he expressed the pain he felt, at the performance of this part of his duty. He called to the prisoner's recollection the favourable trial he had received—It was impossible that more attention could be paid to any case, or more caution used, to give the prisoner the advantage of every apparent contradiction in the evidence. The jury were men of excellent character, and clear judgment, who investigated the case with much patience, and discernment. Every man who heard the trial, must be fully convinced of the justice of the verdict—his

employer had acted humanely towards him, he had cautioned the prisoner on that night to go home, and had now come forward at the last time, to testify in his favour. But his advice was not followed; and it appeared from the prisoner's evidence, that while the rebellion was raging, and shots firing around, the prisoner was inquiring with cool indifference for a pair of small-clothes—that was made the colour of excuse—because from the time he left the tailor's till he was taken with a pike, he had full time to escape, and to act in participation with the loyal men who surrounded him—instead of which he fled and concealed himself—his life was spared by the brave and gallant man who secured him. The consciousness of guilt which made him a coward, was contrasted with the valour and mercy of the soldier. There was no doubt, that the prisoner was one of that number, who meditated massacre and murder, and it might well be seen, what would be the progress of the provisional government, when it was preceded by such cruelties as were

perpetrated in the contest. His lordship hoped, that all who had engaged in the pre-meditated mischief would be deterred from persisting in their crimes, and many doubtful characters might be rescued from delusion—the innocent would be secured, and the people permitted to sleep tranquilly in their beds. Scarcely four years had elapsed since a general pardon was passed for offences of this kind. The conduct of government since had been a continual chain of clemency, with more beneficence towards the lower order of the people, than has been witnessed in any other country. But it is vain to compromise with crimes—and lenity to them becomes cruelty to the public. His lordship expressed his hope, that the people would take warning by the severe examples which were made, and after entreating the prisoner to pass the remainder of his time in penitence and prayer, and to offer up a devout heart to the father of all mercy, he pronounced the sentence in the usual form.

659. Trial of WALTER CLARE for High Treason; before the Court holden under a Special Commission at Dublin on Monday September the 5th: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.

* Monday, Sept. 5th,† 1803.

Judges present:—Lord Norbury, Mr. Justice Finucane, Mr. Baron George, and Mr. Baron Daly.

Walter Clare was put to the bar for trial.—On Wednesday, the 31st of August, he was arraigned upon the following indictment:

County of the City of Dublin to wit } THE jurors of our
their oath present that Walter Clare late of Thomas-street in the city and county of the city of Dublin subject of our said lord the now king not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and intending the peace and common tranquillity of this kingdom to disquiet molest and disturb and the government and constitution of this realm to change subvert

and alter and our said lord the king from the royal state title honour power imperial crown and government of this kingdom to depose and deprive and our said lord the present king to death and final destruction to bring and put he the said Walter Clare on the twenty-third day of July in the forty-third year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death

And that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations and compassing aforesaid he the said Walter Clare as such false traitor as aforesaid on the said twenty-third day of July in the forty-third year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did conspire confederate and agree together and to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this united kingdom of Great Britain and Ireland

* From the Report of William Ridgeway, esq. Barrister at Law.

† The preliminary proceedings will be found at the commencement of Kearney's trial.

And afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Walter Clare as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes as aforesaid did arm himself with and did bear and carry a weapon called a pike with intent to associate himself to and with divers other false traitors armed with guns swords and pikes whose names are to the said jurors unknown for the purpose of raising levying and making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king within this kingdom

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of Dublin aforesaid the said Walter Clare as such false traitor as aforesaid with a great multitude of persons whose names are to the jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king did levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said Walter Clare against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

And the jurors of our said lord the king upon their oath do further present that the said Walter Clare being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said sovereign lord the king and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom and in order to fulfil and bring to effect the said traitorous compassing imaginations and intentions last mentioned of him the said Walter Clare afterwards to wit on the said twenty-third day of July in the said forty-

third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of him the said Walter Clare against the force of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

The Prisoner pleaded Not Guilty; and said, he was ready for his trial. He was now put to his challenges, and the following jurors sworn, after one upon the panel was set by on the part of the crown, and fifteen challenged peremptorily by the prisoner:

William Murray,	John Stanly,
George Binns,	Nathaniel Caldwell,
Francis Kirkpatrick,	James Chambers,
George Beauman,	Robert Morgan,
William Tenant,	William Cromie,
John Clarke,	William Howard.

The Counsel and Agents for the Crown were the same as on the former trials.

Counsel for the Prisoner.---Mr. Mac Nally.
Agent.---Mr. L. Mac Nally.

Mr. O'Grady opened the Indictment.

Mr. Attorney General.---My Lord, and Gentlemen of the Jury;---We shall offer to you, on the part of the crown, sufficient evidence to establish, without leaving any doubt that a rebellious insurrection existed in this city upon the 23rd of July last, and we shall then apply ourselves to the particular part which the prisoner appears to have taken in it. The evidence against him is, that an honest and loyal man, looking out of his window upon that calamitous night, saw a great body of persons armed with pikes, and the prisoner and another person, also armed with pikes, in conversation with each other. One expression which will be proved to have been made use of was, "This is our night, we will work pleasantly." From which of them this proceeded I do not exactly know: in point of law it is equally criminal in both; because if they were all collected upon a common confederacy and design, the expressions of one are evidence against all concerned; and you are to collect the guilt of each from all the circumstances which occurred. The overt act charged against the prisoner is, that he took up a pike for the purpose of aiding in the conspiracy. In point of law it is not ne-

sary that he should have done one act with the pike, or have used a single expression; though there may be additional evidence to satisfy your minds as to the purpose for which the instrument was taken up. But when we consider the nature of the instrument, and that it is criminal to make them, and that men armed with such instruments committed great atrocities on the same night, it is a reasonable conclusion, that a man arming himself with such an instrument, and encouraging others by his presence, was guilty of treason.

I should farther observe, that after the military had fired two volleys, the main body of the rebels having been thrown into confusion, and the game being then a little desperate, the prisoner threw down his pike, rapped at the door where he lived—called to a person by name—it was opened, and he went in;—therefore there is no reason to suppose he was there by compulsion, if that should be his defence.

Gentlemen, we shall submit this evidence to you, and it will be for you, upon the whole to draw a fair conclusion from it.

Edward Wilson, esq. sworn and examined.

Gave the same testimony as upon the first trial. [*Vide Kearney's case, p. 711.*]

Lieutenant Coultman sworn and examined.

Gave the same account as before. [*Vide Kearney's case, p. 719.*]

John Forrest sworn.—Examined by Mr. Townsend.

Where did you live, on, or before the 23rd of July last?—At No. 9, in Thomas-court.

Is that court a broad or a narrow place?—It is a narrow street.

How far is it from Thomas-street?—It runs into Thomas-street, close to St. Catherine's church.

Is it in the city or county of Dublin?—It is in the city, in that part.

Do you know the prisoner?—I do by eye-sight.

How long have you known him?—For a couple of months before that.

Do you mean before the 23rd of July?—Yes.

What particular opportunity had you of knowing him?—He lived exactly opposite to me, and was every evening at the door, or looking out of the window.

Did you know his person perfectly well?—I did.

Did you see him on that night?—I did.

Where?—In Thomas-court.

Where were you at that time?—Sitting in my own room.

How high from the street?—One pair, not above ten feet.

At what time was it?—To the best of my opinion it was after ten.

Was the prisoner armed or unarmed?—He was armed.

With what instrument?—A pike; a long pole with a spike at the end of it; and there was another person whom I knew also.

Were there any other persons there?—There was a number of others.

Was that other person whom you knew armed?—He was.

Were the rest of the people armed?—They were.

What arms had they?—They had all pikes.

Did you see any other kind of arms?—No.

Was there any one of the party in particular conversation with the prisoner?—Yes.

Which of them was that?—The man whom I knew.

How near were they to you when in conversation?—They were in the middle of the street, walking up and down, and it is very narrow.

What did you hear said?—One of them said to the other, "This is our night, and we will work pleasant."

Had they pikes at this time?—Each had a pike on his shoulder.

When you heard these words, could you be sure which of them spoke?—I could not.

Are you sure the words were spoken by one or the other of them?—It could be no other, for at that time there was no other near them.

Had there been any shots fired before that time?—There was one.

In what direction, as you could judge, was the shot fired?—It was in Thomas-street.

Did you hear any shots soon after the words were spoken?—I did.

Did they appear as single shots, or as volleys?—They appeared to me as volleys.

How many volleys did you hear?—Two.

Did you hear any more?—No more; I heard different shots, but no volley.

On the firing of these shots, what did the prisoner and his comrade do?—They all ran different ways.

What do you mean by all?—All the men there.

What did the prisoner do?—He and the other man came to the lodging door, one laid down his pike against the wall in a sloping direction against another door, and the other laid his pike upon the pavement; one called out, "Biddy, Biddy, open the door."

Court.—When did you first see the prisoner that night?—Not till I saw him in arms.

How long did you see them there?—They were half an hour altogether walking up and down; I never took my eyes off them.

Mr. Townsend.—What did these two persons do?—One of them said, "Biddy, Biddy, open the door."

Can you be sure which of them said that?—I cannot.

At which door?—At the door where they lodged.

Court.—Did they both lodge in the same place?—They did.

Mr. Townsend.—How soon was this after

speaking the words you mentioned?—Some time; it was not immediately after they spoke the words; but it was after the last volley was fired.

Was the door opened?—Certainly it was.

And they went in?—They did.

Did you see the prisoner again that night?—No more.

Court.—How long have you known that other person?—The same time I knew the prisoner.

Mr. Townsend.—Had they lived long in that house?—They might, but not to my knowledge.

But they lived there you say, two months?—They did.

Is he a tradesman?—He worked at a distillery; as I understood, they both worked there.

During the half hour you saw them walking up and down, had they their pikes?—They had.

In what direction did the people run when they heard the fire; was it towards the fire?—No, it was from the fire: they run in different directions; some down an alley; some down Rainsford-street.

Had they pikes?—They had.

John Forrest cross-examined by *Mr. Mac Nally*.

After the volley was fired, the mob, you say, ran some one way and some another?—Yes.

They did not all run from the direction of the fire?—There were various directions; they did not all go one way.

Did many of them turn to get into Thomas-street?—It was straight enough to Thomas-street, but they went from Thomas-street.

How long have you lived in Thomas-court?—A year and a half.

The prisoner is a labourer and works at a distillery?—I do not know; I heard so.

You have seen him often?—I have.

Was he a regular working man at his business; was he always a sober man?—I cannot say; I never sat with him; many men in drink walk without staggering; I never smelt his breath.

How soon did you give information?—As soon as I could.

Did you give information for a fortnight?—I did, before the prisoner was taken.

How soon?—The second day.

To whom?—To my shopmates.

Were they yeomen?—They were.

Why did they not take up the prisoner?—They were in dread and fear.

Do you mean to say, that the yeomen who turned out to defend the city were afraid?—They were afraid of me.

Why of you?—That I would be in danger.

Why did you not go to a magistrate?—I always depended upon the yeomen taking him; they put it off one night after another, till I went to captain Bloxham.

Did you go to him before or after great re-

wards were offered?—It was before; I did not do it for reward.

How soon did you go to captain Bloxham?—In ten days.

Was that before the rewards were offered?—I believe it was.

Upon your oath, do you not know that rewards were offered three days after the 23rd of July?—Upon my oath I do not know it.

On your oath, did you never see a proclamation offering rewards, posted in Thomas-court?—I never saw it in Thomas-court.

Where did you see it then?—I saw it posted in Barrack-street, on the opposite side from where I was walking.

And could you read it from the opposite side?—No, but they told me it was a proclamation to take up all persons who carried arms that night.

Can you read and write?—I can.

Did you see the proclamation offering a reward of one thousand pounds?—I did not.

Did you never hear that there was a proclamation offering a reward of a thousand pounds for the murderers of lord Kilwarden?—I did not.

Did you hear there was a proclamation offering a reward of 50l. for every one of the first hundred persons convicted for being concerned in the rebellion?—I believe, I did.

Did you see the proclamation?—I did not.

But you heard of it?—I did.

The main body of the people you say ran away from the street?—They did.

The two persons of whom you say the prisoner was one, did not go out of the street with them, so that they took the first opportunity they could get—to house themselves.

I was not going to ask you that: do you know, I was going to ask you that?

[The witness smiled.]

You seem to make merry of it?—You would not have me cry.

Sir, I would have you conduct yourself with decorum. Did the two men go into their own house?—They did, after the last volley.

Could they tell whether these volleys were from the mob or the army, could you tell which it was?—I could certainly tell that it was not from the mob; they could not make such a fire.

How came you to know how these men were armed?—I saw them in my window.

Did you hear that these who were in Thomas-street, had muskets and blunderbusses and pistols?—I did not.

Did you hear of their firing at all?—I did not.

Did you not hear of an officer being shot with a blunderbuss?—I did not, I heard he was piked.

Did you not hear he was shot?—I heard various stories; but a man is not to believe every thing he hears.

Did you never hear the officer was killed by a shot from a blunderbuss?—I never did.

Did you hear that captain Wilson was fired upon by the rebels?—I did not.

Did you hear they attacked them with pikes?—I certainly did.

But you did not hear there were shots fired?—Not by them.

Did you hear he killed a rebel with a shot?—I did not.

At what hour did you hear the volleys?—About ten as I think.

Do you believe that the rebels were armed to attack the king's government and his troops?—I have no doubt of that.

And you say as soon as they found the business begun, they ran away; was any attack made upon them?—Not in Thomas-court.

How many were there?—About one hundred pikemen in arms to the best of my recollection.

Did they not prepare arms and come armed for the purpose of waging war against the crown?—I am sure of it.

And the moment the fight began they ran away?—They did.

The prisoner got into his house, you say; do you not believe he did not intend to fight?—What put a pike in his hand?

Did you see him make use of it?—Only marching with it on his shoulder, walking up and down as a sentry.

What was he guarding?—I took care not to ask him.

Was he guarding that one hundred men?—I would not venture to ask him.

Is not a sentry put to guard something?—And would you have me put my head out of the window to ask him? Oh! I am obliged to you.

How came you to know that the words were uttered which you spoke of?—There was a broken pane of glass.

Do you put your ear out?—No, I had an eye and an ear at the window.

Then how can you know that the prisoner spoke?—I do not say he was the person.

How could you distinguish him and the other man from the rest?—There were no people with them at the time.

Was it after the volley they spoke of?—It was after the first shot.

Your head was not through the window; how could you see the people?—I was only ten feet above the ground.

But how could you see, as you remained at the window?—Very clear.

It was a dark night?—It was, but I could see them.

Whereabouts was the lamp?—There was none.

Were you here when Mr. Wilson was examined?—I was not.

Jury.—You say the night was very dark?—Not so dark but I could discern and see them, being my neighbours and being armed.

Was there a lamp near to them?—No one.

Court.—Can you name any of the persons to whom you gave information two days after?

—Yes: I told it to Thomas Price, Robert Boyd, and some others.

Are any of them here?—None of them.

Was any person in the room with you?—My children, and a man who was flat upon his mouth and nose, hiding himself, for fear of being killed.

Did he see them?—No.

Did he know what passed?—No.

Did you tell him?—I did, and my children told him.

How old are your children?—My eldest girl is fourteen.

Did she see what passed?—She did; she was at another window, and the rest of the children were crying for fear of being killed.

Did she see the prisoner?—She saw him going into his house.

Jury.—Could you see the number of one hundred persons without putting your head out?—I could, when they were opposite to me.

Court.—Did the crowd pass back and forward?—They passed up and down, that is the way I guess them to be 100 persons.

Jury.—Where do you live in Thomas-court?—At No. 9.

What distance is that from Thomas-street?—About as far as this table from the wall, about eight yards.

Is your house near Rainsford street? near one of the angles?—It is.

What pane was broke in the window?—The middle pane.

How high was the window from the floor?—About ten feet.

Court.—Did any person in the house but your daughter see the transaction?—No other.

Jury.—Did you mention to the man who was in the room, what you heard the people say?—I did, to John Houghton; he made his escape to my house.

Did you tell the prisoner's name?—I did.

How was the prisoner dressed?—In a grey jockey coat.

Court.—Is Houghton here?—He is not.

Is either of your shopmates here?—No.

Where are they?—Working in the Foundling Hospital.

State their names?—Thomas Price, Robert Boyd, and James Murray.

Where is your daughter, who is 14 years old?—At my place in Watling-street.

What number?—No. 40.

Have you changed your lodging?—I did for fear of mischief.

How soon after?—A fortnight after.

Jury.—Can you point out in court any colour like the coat which you saw upon the prisoner?—I do not see any thing like it.

Counsel for the Crown.—When you saw alderman Manders, had you any conversation

with him upon the subject?—I swore the informations before him.

Mr. Mac Nally.—Your lordships will look into the informations, and see when they were sworn, and what the import of them are.

Jury.—When you saw the prisoner from the window, did you know him immediately?—I did.

Did he march with the people or remain by himself?—He did not march with the people, he and the other man remained mostly together.

Did he stand sentry at his own door?—No, he did not.

Court.—Did any of the other people appear to be sentries?—They walked to and fro, but did not go far from the place.

Could you distinguish the countenances of the rest of the pikemen who passed under the window?—I could, many of them, for they came very often close under the window.

Was it by the light of a lamp you distinguished them?—No.

Was the night very dark?—It was not so dark but I could see the faces that were near me.

Did you ever see the grey coat before?—I cannot say.

Were there any of the others dressed like him?—They were almost all of them in grey.

Mr. Mac Nally.—Was there any man there with a brown coat?—Many men might.

Had any man a coat the colour of your own?—I dare say there were numbers, but to swear to the colour of what was upon every man's back I cannot.

Was it a long or a short coat?—It was a long coat down to his feet.

Court.—You say there were several others with pikes walking back and forward; what number were there?—About one hundred.

Did they all appear as sentries?—I cannot say; they walked to and fro.

Were they as much sentries as the two men you have mentioned?—No; these two men never walked out of my sight; the others did walk out of my sight.

Did the rest appear as sentinels like the two you spoke of?—I cannot say; they walked up and down, and went through the street at each end.

Were the two men from your sight at all?—They were not five minutes from my sight during the whole time the people remained.

Jury.—Could you put any part of your head through the broken pane?—I could easily.

Did you put your face out that night?—I did several times.

Mr. Mac Nally.—I thought you denied that?—You asked me whether I looked through the window with the sash up, which I did not.

Jury.—At the time you saw the prisoner, you put your head out?—No.

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When you put your face out, could you see up and down the street?—I could.

Mr. Mac Nally.—Did you not say to me, that you were not fool enough to put your head out?—I was not fool enough to raise the sash and look out?

You said you had your eye and your ear to the broken pane?—I did.

And you said you would not put your head out?—I would not.

Then what do you mean by saying that you put your head out?—I put my face out, and could put my head; when there was an opportunity, by their backs turning.

Court.—Could you see far when you put your face out as you say?—I could, far enough.

Mr. Attorney General.—From the turn which the cross-examination has taken, we wish to examine as many witnesses as we can; I have given directions that the daughter of the last witness should be sent for, and also the several persons with whom he worked, and whom he mentioned, and in the mean time we will examine alderman Manders.

Mr. Alderman Manders sworn.—Examined by *Mr. Attorney General.*

Do you know Forrest?—I do.

Did he lodge examinations before you, which related to the prisoner?—He did.

Can you recollect whether he swore examinations before you the first time he informed you of the matter, or afterwards?—It was some time after, but I do not recollect how long; I believe it was a week after.

State what occasioned the delay, if any circumstance did occasion it?—He told me he was afraid of being murdered.

When he first came to tell you the story, he was not impatient to swear?—By no means, he told it rather reluctantly.

Did you ask him to swear examinations?—I believe I did, and he postponed it; he said he would on a future day, giving that as a reason, that he was afraid.

Was Clare, the prisoner, under an arrest at that time?—I believe not; I am pretty sure he was not; for upon getting the information, I applied to captain Bloxham, and some of the liberty rangers, to arrest him.

Was the prisoner in custody when the informations were sworn?—He was; upon getting the account I did, I had the prisoner arrested, as I said; and then the witness swore the informations.

Mr. Attorney General.—Do you recollect whether any thing passed between you and the witness respecting rewards?

Mr. Mac Nally.—My lord, I object to this question; the magistrate cannot give in evidence any conversation which passed between him and the witness, in the absence of the prisoner.

Mr. Attorney General.—The cross-examination went to show that the witness was influenced by reward to give the information;

but, however, the objection to the question answers my purpose.

Lord Norbury.—I should be glad to hear the point argued, if the objection be made, and the question persisted in. This gentleman is called to show the consistency of the witness's account; there was a long cross-examination, as to the point of reward; and if the counsel for the crown have a right, by the laws of the land and the rules of evidence, to corroborate his testimony, by evidence of the general consistency of his story, and not to the very point upon which he was cross-examined, I should be very glad to hear the matter discussed.

Mr. Justice Finucane.—I did not think the matter required discussion, because the attorney-general seemed to me to withdraw the question, thinking the objection made answered his purpose.

Mr. Attorney General.—I did not withdraw the question because I thought it an improper one, but upon the persuasion that the objection which was made to it, answered the purpose which I had in putting it; but after what has passed, I think it better the matter should be inquired into; it may be in favour of the prisoner.

Mr. Mac Nally.—Then, my lords, I object to the question upon decided authority. The credit of the witness is not impeached; in course of cross-examination, as in all other cases it has been attempted to be shown, from the manner in which the evidence is given, that the witness may not be completely consistent or accurate in his testimony, but the impeachment of the credit of a witness is where you attack the moral character or turpitude of the man, showing that he ought not to be believed upon his oath.

Mr. Baron Daly.—The position you lay down is broadly this, that you cannot impeach a man by cross-examination?

Mr. Mac Nally.—No, my lord; the principle is this, when you ask a man, was he charged with felony, or any other offence, that goes to impeach his personal credit;—

Lord Norbury.—You will please to recollect that you asked the witness, whether it was not after hearing of the rewards that he came forward to give information.

Mr. Mac Nally.—But, my lord, I carefully avoided asking the witness, whether it was in consequence of the reward that he came forward; if I had asked that question, it would go to impeach his credit:—but I shall state an authority for my conduct, having the sanction of one of the learned barons who now preside, and so far back as the case of Leary,* it was the opinion of counsel, upon consultation, that hearsay evidence could not be given; but I made a search into the state trials, and I find that such evidence has been usually admitted: the case of Leary occurred before Mr. Justice Chamberlaine, Mr. Justice Finucane,

and Mr. Baron George;—the moral character of Lawler, the witness for the crown, having been impeached, the question was, whether he had denied the existence of a God, and whether he was not charged as a thief, in stealing certain articles. This was shown by his cross-examination, and also by witnesses swearing that he did not deserve credit upon his oath. Mr. George Cowan was called to prove, that the witness, in disclosing the facts to him, told word for word, as he had afterwards deposed in court. It is true, that upon these trials, the witness was impeached directly;—so in the case of O'Brien,* the questions went to his moral character.

Lord Norbury.—Surely if a man be asked, upon his cross-examination, questions which are pointed directly to himself, with a view to show that he had been induced by the hope of reward to do that which otherwise he would not have done, can any thing go more strongly to affect his religious or moral character?

Mr. Justice Finucane.—The course of cross-examination must have been intended for some purpose. It strikes every body, that an impression was intended to be made by it, and the objection which is now made is founded upon this, that impression is made, and any attempt to remove it ought to be resisted.

Mr. Mac Nally.—My lords, to shorten the discussion, I will wave the objection.

Mr. Attorney General.—The Court and the jury having ruled the point, Mr. Mac Nally gives the weight of his authority to the decision.

Examination resumed.

Was any reward held out to him?—In my presence nothing of the kind was mentioned, either previous to his examination or since.

Did he show any eagerness to give information?—No, rather a reluctance.

Mr. Alderman Manders cross-examined by Mr. Mac Nally.

If he told you he expected a reward, would you refuse his informations?

Mr. Justice Finucane.—It is a decided case, that such an expectation would not render him incompetent.

Mr. Alderman Manders.—He said, he acted from principle; that he was bred and born a Protestant in the north, and that he and all his sort would shortly be massacred.

Mr. Attorney General.—You have heard of the proclamation issued by government?—I have.

Can you say, whether the information which was sworn by Forrest, was before or after that?—I cannot recollect.

Felix Brady, esq. sworn and examined.

Gave the same evidence upon his direct examination, as in the former cases. [Felix Kearney's case, p. 714.]

Felix Brady, esq. cross-examined by *Mr. Mac Nally*.

It was a dark night?—It was.

It was so dark, that the rebels got close upon you before you distinguished them?—They were so close to me, that I did not observe them, but from the flash of the pan, showing those persons upon the left.

You could not have known they were there, but from the flashes?—Except from finding a man with a pike, as I stated before; but I could not distinguish his face at the distance of four yards.

Nor the colour of his coat?—I cannot say that I might have known the colour of a coat.

But you could not see whether it was a fine or a coarse grey coat?—I should not mind that.

Mr. Solicitor General.—How long did you remain out that night?—When I went to the barrack in James's-street, I found the guard drawn out in the front of it. I remained there some time, and the commander of the forces sent word that he wished to see me; but before that I had returned to Thomas-street with an additional party. We found several pikes, all of them bloody; several marked with blood down the iron part, and the rings, and some of them two or three feet down the handle. This circumstance escaped my observation on the former trials.

Did the night grow brighter or darker as it advanced?—It grew brighter after eleven.

Extracts from the proclamation were then read. [*Vide* Kearney's case, p. 723.]

Mr. Attorney General informed the Court, that the messengers who had been dispatched for captain Bloxham, and Forrest's daughter, had returned without finding either of those persons at home. The other persons were expected: he therefore closed the case for the crown, reserving a liberty to examine those persons, in case they arrived during the trial.

DEFENCE.

Mr. Mac Nally.—My Lords and Gentlemen of the Jury;—This is a case which is exclusively for the jury to determine. No material point of law has arisen upon which I can have occasion to address the bench.

Gentlemen of the jury, in submitting the case of my client to your consideration, I shall have little to observe upon; you will have no intricacies of evidence to bewilder your minds, or to detain you for any considerable time in contemplating on the verdict which results from the facts sworn to, and which in my humble judgment, without presuming to dictate, but concluding from the impression made upon my understanding, will be a verdict of acquittal.

The question is, whether from the evidence given to you, the prisoner be guilty of the crime charged upon him by the indictment?

The crime in the abstract is conspiracy. Conspiracy, I admit, of the most heinous tendency—conspiracy with numbers of persons unknown, to raise, levy, and make public war insurrection and rebellion against his most gracious majesty, our sovereign lord the king, within this kingdom; and this, gentlemen, is laid as an overt act, that is, an open deed, to show the purpose and intent of the conspirators to be that which you must consider most nefarious and diabolical,—a means of deposing the sovereign of this realm, from his state, power, and government, and to depose and deprive him of his sacred office of king—and to bring and to put him to death—or in the legal phrase of the statute, upon which the prisoner is indicted, the statute of the 25th of Edward the third, “to compass and imagine the death of our lord the king.”

But, gentlemen, though the general charge is, that the prisoner did compass and imagine the death of our lord the king, that is not the point to which your attention is to be directed. The points for your consideration are, the overt acts laid in the indictment, by which the furtherance of the intent to compass and imagine the death of the king is made evident; for the statute says, the intent must be made out upon sufficient proof of open deed, by people of the prisoner's condition, that is, proof by witness deserving credit, of open facts in which the prisoner participated, sufficient to convince the jury of his traitorous intention to bring the king to death: or, as courts by construction have laid down the law of this species of high-treason, to bring the king into such a situation or predicament, as may eventually endanger his life.

The overt act or open deed, to which I conceive the evidence in this case applies is, that this young man at the bar, on the night of the 23rd day of July last (when undoubtedly a rebellion raged in Dublin, as has been proved) in prosecution of the treason charged, “did arm himself with, and did bear and carry a pike, for the purpose of raising and making insurrection and rebellion and war against our lord the king within this realm.”

Gentlemen, I conceive this is the charge, to which I ought, as counsel for the prisoner, to apply his defence; it will be for you to determine whether, from the whole of the evidence you have heard, it appears to you plainly and beyond doubt, that the prisoner entertained the wicked imagination of the heart imputed to him; for, if he did, the law certainly has said—and I am not to contend here against the rule—that he is implicated in the same degree of guilt as if those imaginations had been carried into effect and actual execution.

One witness only has given testimony to the fact of carrying the pike, and it has been determined that at common law one credible witness is sufficient to support an indictment for high treason; in England there must be two; but there, two are made necessary by

statuti. This witness, gentlemen, is John Forrest, and it is your peculiar duty to judge of the share of credit to which that man is entitled.—You will judge of his credit by taking into consideration the manner of his giving his evidence, as well as the evidence itself; for the credit of a witness may be materially affected, or it may be totally destroyed by his manner of delivery. His voice, his countenance, his gestures may be circumstances to impress suspicion of the facts he utters on the minds of a jury. So, if you find him inconsistent, or prevaricating or obtruding his own sentiments or opinions you ought to suspect his veracity. An excess of zeal, a solicitous reserve, an affectation of candor, and innumerable other appearances, may render his testimony questionable, of course create a doubt and insure an acquittal. Now, I submit to you, gentlemen of the jury, that this witness, even if you should think his evidence uncontradicted by the testimony of lieutenant Brady, appears in such a questionable shape, that I will venture to assert that, in the nature of things, you cannot conclude, consistently with conscience, that the prisoner is guilty. However strong your suspicion may be, that will not sanction a conclusion of guilt: no, gentlemen, should you even believe, or rather should you even be convinced that the prisoner was in Thomas-court on the night of the rebellion, that will not amount to a conclusion of guilt, unless the evidence also satisfies you, that he was there acting as a traitor in the manner described by the overt act, and in furtherance of the purposes charged in the indictment.

But supposing the credit of the witness Forrest not to be impeached, consider the probability of what he has sworn. Consider whether it be probable that a man, situated as the witness was, could have seen and could have heard, in the manner he has described. Mark his situation—he stood in a window, with his head at a broken pane of glass; the window ten feet above the street, so that he must have sworn to the countenance of the man though he had no means of seeing, but by looking down upon him—standing in that position, with his face at the window, his head not entirely out, peeping like Tom of Coventry, he also takes upon him to swear to words which he imputes to have been uttered by the prisoner.—Gentlemen, remember there was not sufficient light for the witness to discern a man's features, remember he could only see down on his head—and yet, he swears to the countenance of this man, and even to the colour of the coat he wore—nay even to the texture of that coat, for he swore not only that it was a grey coat—but a coat of coarse grey cloth. The eyes and the ears of this witness must be of most extraordinary organization indeed! for he sees and distinguishes colours and textures in the dark, and distinctly hears and recollects an individual voice articulating in a tumultuous assembly of armed men.

Gentlemen, when you compare this witness's evidence, in one particular circumstance, with the honourable and unbiassed testimony of lieutenant Brady, you will find yourselves bound by the imperative dictates of conscience to acquit the prisoner. That officer, whose humanity illustrates the purity of his mind, and the intrepidity of his heart, tells you mildly and truly, that "the night was so dark he could not perceive where the rebels were—and that though the atmosphere grew lighter, as morning approached, yet, at the time he was in Thomas-street, there were several persons taken prisoners and put between the divisions for safe custody, some of whom made a great noise" (which, gentlemen, must have attracted the lieutenant's attention towards them) "yet he could not distinguish them the next morning, so as to identify their persons or their faces." Compare this with the obstinate and positive, and therefore the suspicious, accuracy of Forrest, and ask your hearts, ask your consciences, to which witness you ought to give credence.

I am convinced from the fair and candid manner in which these prosecutions have been carried on, that the counsel for the crown, could they with propriety deliver their opinions, would assure you they would much rather in a doubtful case, as the present one is, that there should be an acquittal than a conviction.—Is this case doubtful? I put the question now not to your feelings, but to your understandings. The prosecution depends upon the evidence of a single witness, swearing to the identity of a man, under the circumstances I have mentioned. This evidence, I say, is uncorroborated by the testimony of any of those persons to whom he says he communicated the matter as confidential person, or by any of those whom he states to have been in his room at the time. His daughter is not brought here by him—is that omission accounted for? Her being sent for, and being from home, only increases suspicion that she were here, and spoke truly, she must contradict her worthy father. His fellow workmen are not here; nor is captain Bloxham produced, to whom, it is alleged, he communicated what he saw in the dark. So that upon the whole of the case, the evidence given by the crown can only amount to this if to so much, that you, gentlemen of the jury, may fairly and justly suspect that the prisoner was one of the banditti who committed treason on the 28th of July last. The counsel for the crown would not, they could not put the question against the prisoner stronger to you than I have done,—and they must admit that evidence amounting only to suspicion is evidence of doubt—is evidence for acquittal.

The law of evidence clearly and decidedly lays down this rule,—and the rule is just—that whenever a doubt exists in the minds of the jury, they should incline to the prisoner, and acquit. This rule has been repeatedly mentioned, and never controverted;—but

however often it may have been mentioned, counsel are obliged, in every new case where it applies, to repeat it;—and I repeat it now, gentlemen, because it applies in favour of my client most efficiently, and because some of you might not have been present, upon former occasions, when my lords, the judges, have promulged it, in the greatest extent and amplitude of its benignity—by charging the jury to recollect, that in all cases, where the life of a man depends upon the verdict of a jury, and a rational doubt is impressed upon their minds, either as to the credit of the witnesses, or the perpetrators of the facts sworn to in evidence, they ought to acquit.

If ever there was a charge rendered doubtful, by the circumstances produced to support it—it must be the present: this defence principally emanates from the evidence given on the part of the crown; but I have some material facts to state on the part of the prisoner.

I am instructed to state, that the young man at the bar will satisfy you, by the testimony of creditable witnesses, that he was in his own lodgings on the night of the insurrection. He does not deny the fact of his living opposite Forrest's house, but he alleges, and I am instructed he will prove, that on that night he was at home, and not in the street as sworn to. Farther I am warranted to assert, on his part, that not only on that night he was in his lodgings, but that he appeared publicly in the streets every day, and returned home every night, down to the time of his arrest, which was a full fortnight after the 23rd of July.

You will see, gentlemen, that he did not fly, and his not flying, after the 23rd of July, I submit to you as negative proof of his innocence, which ought to impress great weight on your minds. Flight is in itself an offence—it is contempt of public justice, arguing consciousness of guilt, and being, in some degree considered evidence of criminality consequently where the party charged does not fly, it should operate in his favour.

Therefore supposing the witness, Forrest, not to be impeached in point of veracity, you will consider whether he may not have been mistaken. If the cross-examination has impeached his credit (and the counsel for the crown must have conceived it did, for they thought it necessary to support him by calling alderman Manders)—the alderman's evidence will reduce it still more. The alderman was called on to show that the witness came to him without any apparent zeal, and that he did not mention a word about reward, or expecting reward; but how does this set him up? If he intended to take away the life of a man, would he be such an idiot as to tell the magistrate he was instigated to inform against the prisoner by expectation or the hope of a reward?

Under all these circumstances, I think this is a case for the humanity of a jury to interfere. We are not in Ireland as in France,

where accusation insures conviction, and where execution succeeds, quick as the thunder follows the lightning's flash. The man upon his trial has the benefit of a jury, a guard which the constitution of this realm has placed for defending the life of the subject against the charges of the public accuser. In our courts of justice, the duty of the counsel for the crown is, not to seek conviction, but to investigate truth; and if the evidence of the charge produced by them be not sufficient to convict, by being insufficient to convince, it is your duty to acquit. You cannot convict but on incontrovertible conclusion of guilt;—there is no such conclusion here; and therefore I sit down clear in my own mind that your verdict will establish the innocence of the prisoner.

Mr. Attorney General.—Some of the persons who were sent for, have now arrived.

Mr. Mac Nally.—I must object to any witness being now examined for the crown—their case was closed.—I feel extremely ill and languid—and it might be of serious consequence to my client, should any thing occur that might require farther observations from his counsel. Consider, my lords, I stand alone and without aid.

Mr. Solicitor General.—The witnesses may be examined in reply to the prisoner's case, therefore no objection can lie to their being examined.

Mr. Justice Fiacane.—We think it should come as original evidence.

James Murray was then produced on the part of the crown.

Sworn.—Examined by *Mr. Solicitor General.*

Are you acquainted with John Forrest?—I am.

You are a carpenter?—Yes, sir.

Had you and Forrest been in the habit of working together before the 23rd of July?—We had, a long time.

Where were you both employed before that day?—At the Foundling-house, in James's-street.

Do you recollect seeing Forrest the next morning, upon the 24th?—I did. I was in his room that morning.

Had you any conversation with him, or did he say any thing respecting the transactions of the night before?—He told me there had been a great parcel of men at his window with pikes.

Did he mention whether he knew any of them or not?—Generally, he did not; but he mentioned one that faced his own door, or lived opposite to him.

[Not cross-examined.]

Jury.—Did he mention any name to you?—He did; but I do not recollect.

Did he mention more than one man?—No, I did not hear him say that he knew more than one man; I cannot be positive, not thinking I should be questioned about it.

He said the man lived opposite to him?—He did, and pointed to the house.

Was there any pane of glass broke in the window of his room?—I did not observe it.

Did he say how he saw them?—He said, the pikes reached up to the window, the room being low.

Court.—Did he mention more than one person that he knew?—I cannot say; I do not recollect.

Jury.—Did he say why he knew him, or what his dress was?—He did not.

How broad is Thomas-court opposite Forrest's house?—It is a narrow street there, not so wide as from this table to the wall.

Court.—Did he give any reason for his own conduct touching any person whom he saw there?—No, only talked of the man he saw.

Did he tell this to any other people?—I cannot say what he told to other people.

Thomas Price sworn.—Examined by Mr. Plunket.

Do you know John Forrest?—I know him since he became a working man along with me.

Had he been working with you before the 23rd of July last?—He had.

When did you see him afterwards?—Next Monday, working together.

Had you any conversation about the disturbance?—We had.

What did he say?—To the best of my recollection, he told me he saw two men, who lived opposite to him, lay their pikes against the wall, and call to the maid to let them in.

Did he mention their names?—I do not recollect that he did.

Are you positive this was on Monday?—I am not; but it was either Monday or Tuesday.

Are you certain it was not later?—I am.

Did he at that time take any step towards giving information before a magistrate?—Not to my knowledge.

Did he express any reason concerning it?—He seemed to be willing to have such people punished; but I believe him to be timid.

What countryman is he?—A North-countryman.

How did he appear to you to be timid?—About having them spoken of, or his name brought in question concerning them, as he lived just opposite to them.

How long did he continue at that lodging in Thomas-court?—I do not know how long; but I know he left it, as soon as he got a room convenient.

Why did he leave it?—I really believe, from being afraid to live in it.

In what situation are you?—A working carpenter, at the Foundling house.

Are you a yeoman?—I am, since the middle of the last rebellion.

Do you know Murray?—I do.

Is he a yeoman?—He was, in the last rebellion. He was a serjeant in the yeomen.

Were you a person of that description in whom Murray might repose confidence?—I believe he communicated to me, what he would not to others. But as to Murray, I cannot say.

[Not cross-examined.]

Here the case closed on the part of the crown; and the prisoner produced his witnesses.

James Fleming sworn.—Examined by Mr. Mac Nally.

Where do you live?—In Thomas court.

Where do you work?—With Mr. Roe, of Marrowbone-lane.

Where did the prisoner lodge?—In my room in Thomas-court.

Did he lodge there on the 23rd of July last?—He did, and long after, till he was taken.

When was that?—On the Friday se'night after.

Was he in your room on the night of the 23rd of July?—He was.

At what time did he come in?—Between eight and nine.

Do you recollect a mob being there?—I have no recollection of a mob there till after he came in.

Can you say there was no mob till then?—I cannot say for that, as I did not leave my room.

When you returned home, was there any mob in the street?—No.

How soon after did the prisoner come?—About an hour; we have no watch or clock.

Did he sleep there that night?—He did.

Did he work after that night with Mr. Roe?—He did, during the whole time.

Was he in bed before the pikemen came into the street?—I cannot certify for that, not being out.

Was he in before the noise began?—We make no great account of noise upon a Saturday-night, in that part, there being a number of working people out.

James Fleming cross-examined by Mr. Attorney General.

When did you hear of this shocking disturbance?—Not till next morning.

What! not till the next morning?—I heard the racket, but I did not know the sense of it.

Who told you the sense of it?—I went out about six in the morning, and saw what it was.

Who first told you of this shocking business?—I cannot tell, for I heard it going through the street.

You cannot tell who informed you?—I cannot tell.

How many lived in your house?—Another man and the prisoner.

What was the name of that other man?—Daniel Kearney.

Where is he?—In the Provot.

Was he within the whole night as well as the prisoner?—He was.

You are sure he was not out that night?—I can certify that.

What women were in the house?—The prisoner's wife and mine, Elinor Fleming and Mary Clare.

Was there any other woman?—No other.

By virtue of your oath?—There was not.

Did the house belong to you?—No.

Were there no other people in the house but those you have mentioned?—I can only speak of my own room.

Was there no other woman in the house?—There was one woman, who is here.

What is her name?—One Ann Judge; her husband was there also.

What other persons were there?—One room more was occupied, and I cannot say who were in it.

At what hour did the prisoner come home?—Between eight and nine.

Who opened the door for him?—I cannot say which it was, his wife or mine, but it was one or other.

What work does he follow?—Common labouring work.

You were sure he was in bed at nine?—He was, I can certify that; if put to a necessity, I could say it was before nine.

Perhaps it was half after eight?—I cannot say for that.

Is it usual for persons to go to bed so early in that part of the town?—I cannot say; sometimes it is later, according to the settlement at the pay-table.

I thought you said you did not mind noise at that part of the town?—No, we do not.

Is it usual to have murders committed, and soldiers firing in that neighbourhood, without noticing it?—There was no murder committed in that street.

Did you not hear shots fired?—I did, after I went to bed, but I thought it might be some rejoicement.

Was there a woman of the name of Biddy in the house?—Not that I know of.

What do you believe?—I do not know her name.

Where is she now?—If she is in the house, she must be in the next room to mine.

Which did you lodge in, an upper or a lower room?—In the two pair room.

Who lodged in the ground floor, as you go in?—One Lynch.

Has he a servant?—I cannot say; he has working people.

He has a wife?—He has.

What is her name?—I cannot say; we call her Mrs. Lynch.

What business do you follow?—A labouring man.

How long have you this coat?—These two years.

What work do you follow?—Serving bricklayers.

You are a hod man?—Yes.

And you have this coat two years?—I have. And you knew nothing of the matter in Thomas-street till next morning?—I heard some noise, but did not know the sense of it.

When you heard the noise, did you look out at all?—I did not; I had a sick child in my arms, and she occupied me.

Had not you a wife?—I had.

Could not she have taken the child, when the noise was made?—She could, but we made nothing of the noise.

Did she look out of the window?—I cannot say; the child clung to me, and I brought it to bed with me.

How long did you stay in bed with the child next morning?—Till six o'clock.

Did your wife go to the window?—I cannot say. There were curtains to the bed, and she did not go to bed as soon as I did, and I cannot say whether she looked out or not.

At what time did she go to bed?—At the very time of the firing, and there was some firing after.

Did she tell you of the people going by with pikes?—She did not say any thing of it.

She saw no people with pikes?—She did not say so; she said there was firing, and I said it might be a rejoicement, and with that she came to bed and drew the curtains, to pacify the child.

Could you tell how many rebels were in Thomas-street that night?—I could not.

How long were you in bed before the prisoner came in?—I was not in bed when he came in.

You went to bed before the firing; what time was that?—Between nine and ten.

The curtains were drawn; but could you see him afterwards?—I saw him at six in the morning.

Could he have got out of the room without your knowing it?—I cannot think he could, for the door was locked, and I did not fall asleep till between ten and eleven, and he was then in bed, and remained so till I got up, and went out next morning.

How can you tell his motions so well, and not know whether your wife looked out or not?—I cannot certify whether she did or not.

Did she tell you she saw any thing?—She did not.

Was it generally known that evening that there would be a disturbance?—I knew nothing of it.

Do you not believe it?—I cannot believe any such thing.

Did not the prisoner tell you, the reason he came home so early, was to avoid the disturbance?—He said no such thing.

Did you know there was a disturbance?—Not till the next morning.

Did the prisoner bring in a pike?—I never saw one with him, nor did he say one word that night more than usual.

Perhaps you never saw a pike?—Not till the next morning.

Court.—Did the prisoner get up to look out of the window?—He never stirred to get up till the next morning.

Jury.—What time does Mr. Roe generally pay his workmen?—About seven o'clock.

What time were you paid?—I was not paid in the yard.

Were you paid that evening?—I was.

At what time?—About six.

How was the prisoner dressed that evening?—He was dressed in his usual working clothes.

What coloured cloth?—A grey coat.

Was it a large wide coat, such as working people usually have?—It was a small tight frock coat, not a tight coat either, much such a coat as this upon me.

Had he a large coat?—No larger than this upon me.

Thomas Maher sworn.—Examined by Mr. *Mac Nally*.

Where do you live?—With Mr. Roe, of Marrowbone lane: I am clerk to him.

What business does he follow?—He is a distiller.

Do you know the prisoner?—I do.

Did he work with Mr. Roe?—He did, for two years back; one time he was absent, when business was backward, and he returned with a character from Mr. Hughes, and got the same employment again.

Did you see him on the 23rd of July?—I did.

Did he work that day?—He did.

Was he paid his wages?—He was.

At what hour?—I am not allowed to pay them till after six o'clock; and they had surplus work, cleaning the yard, and other matters, that kept them till near seven; he was the last of forty-five men who went away.

As he has worked so long with Mr. Roe, you can tell what character he has?—A very good one; and he brought a good character from other employers.

Was he constantly at work?—A very regular, constant man.

Did he work after the 23rd of July?—He did, for a fortnight.

Do you know Fleming?—I do.

What character has he?—He is a very honest man.

Is he deserving of credit upon his oath in a court of justice?—I think he is.

How long is he working with Mr. Roe?—He is employed by Mr. Hendrick, the bricklayer, to whom I gave a return of the day labourers, and he is paid by Mr. Hendrick.

Thomas Maher cross-examined by Mr. *Plunket*.

Do you live with Mr. Roe?—Yes; not in the house with him.

Where do you live?—In Braithwait street.

Where is that?—In the Liberty.

Is it near Thomas-street?—No; but near Cole-alley.

Did you find the men anxious to get away on the evening of the 23rd of July?—Not more than usual.

You went home quietly, I suppose?—I did not see any disturbance, no such thing.

Not even the next morning?—No.

What became of you the next day?—I went to business as usual and called a roll of the men; if any man is absent then, he is cut off a part of a day.

Did the prisoner work every day?—He did; if he was ten minutes short, he would be cut off a quarter of a day.

You heard nothing of the disturbance the next morning?—No.

Nor had any suspicion of a disturbance that night?—I had, from Mr. Logie, who told me there was something contrary that night, and bid me go to bed.

Who is Mr. Logie?—He is in Mr. Roe's employment.

You took his advice?—I did.

And went to bed?—Yes.

Because you were told there was something contrary?—Yes.

And yet you had no suspicion of any disturbance?—No.

At what hour did he tell you?—I cannot say what hour; it was in the evening.

Is he here?—No.

Do you know Fleming?—I do.

He worked there on the 23rd of July?—I cannot say; the book will tell [Here the witness produced a book containing the workmen's accounts].

Was he not a workman of Mr. Roe's?—He was.

And Henry Weldon?—Yes.

Where are they? are they now working with their employer?—Yes.

Did they for a week after the 23rd of July work there?—I will tell you in a moment upon looking into my book [Here the witness inspected the book]. He worked on the 13th of August.

Where was he on the week ending the 6th of August?—We often discharge men as strangers and take them back again.

Where were those persons after the 23rd of July?—I cannot say.

Look at your book?—He was not there.

Was either of them there?—They were not. You put me to my oath, and I have a poor recollection. Tyrrell had got a liberty to go to the country some time before with two brothers; they had a little farm, and wanted to reap their oats, and they got a pass from a magistrate. It jogs my memory, and I recollect it; the time they were absent is deficient in the books.

Court.—Was it on Monday the 25th of July he went?—It was.

What magistrate gave him a pass?—I cannot tell.

What became of Weldon?—Give me my

book; it may jog my memory [after looking into it]. I do not see that Weldon has returned since.

Was he returned, or not?—I cannot say. If he is not in the book, I think not.

That story about the liberty Tyrrell had got, and going to reap the oats, you found in the book?—No, but it jogged my memory.

Where is Weldon now?—I do not know.

Have you no suspicion where he is hiding?—No, I never inquired after him or any other.

How long did he work with Mr. Roe before that time?—I cannot say; he might have ten men to employ one day, and dismiss them the next.

Did you hear Weldon was shot upon that night?—I did not.

Where did he live?—I cannot tell.

How long had he worked there?—I cannot tell.

Cannot you tell, whether he worked a year, a month, or a week?—Not without the book.

Had he worked three weeks?—I cannot say.

Would you not know him without your book, if he worked three weeks with you?—I would.

Was he three weeks working there?—I cannot say.

You have a recollection for Fleming?—I have no recollection for him; he is paid and employed by others.

Was it from Mr. Roe, or you, that he got the small-clothes he had on?—He did not get them from me; but I cannot say, whether he got them from Mr. Roe.

Who gave him the black coat he had?—I cannot say.

He is a bodman?—He is these three years.

And is he enabled to purchase such a coat?—I suppose so; he has thirteen shillings a week.

How long has he had that black coat?—I cannot say.

Did you ever see it before?—I did the last day he was here.

That is his constant dress then?—I suppose so.

Did you ever see it before this court sat?—I cannot say I ever did.

Do you not believe that he got it for the occasion of coming here?—I cannot account for that.

Do you not believe it?—I do not.

How was he dressed upon Saturday evening the 23rd?—He had a white coat, burned with lime and the traces of the bod upon his shoulder.

What coat had the prisoner on?—He had a grey coat.

Were you here the other day when the prisoner was brought up?—No; here is what brought me [producing a crown-summons].

You have a summons, and you would not have come to save the prisoner's life without it?—I would not; I did not know whether his life was depending or not.

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You say the prisoner had a grey coat; was it a short or a long coat?—It was a short jacket.

Has he no other coat?—No other working-dress during the week; he has a blue coat that he wore on Sundays.

Court.—When did you first hear of the disturbance?—On the next morning when I went to work.

Was the prisoner there?—He was at work the next day.

Do you work upon Sunday?—We often do work upon Sunday.

At what hour was Clare, the prisoner, up on the next morning?—At six o'clock I call the roll.

Was he there at six?—I cannot say.

Was he there soon after?—I cannot account for that.

Mr. Attorney-General.—Look at your book and see whether Clare was not absent one day?—[After looking in the book]—He worked only six days; the others worked seven.

Clare was not there upon Sunday at all?—He was not.

Court.—Do you now continue to say, that he came on the next morning to work?—He came on Monday.

Then how came you to say, that he came on Sunday?—Not that Sunday.

But you did say, he came that Sunday?—If I did, I mistook, because the book shows he was not there.

Jury.—Was the prisoner in the employment of Mr. Roe, or in the employment of another person, who worked for Mr. Roe?—In the employment of Mr. Roe.

Court.—You say that the prisoner's ordinary dress is a grey coat; is that a long coat, or is it in the form of that you wear? a short coat?—I never observed upon their clothes. They always strip when they go to work.

Was his coat like a body-coat?—It was.

[Here the evidence for the prisoner closed].

Mr. Mac Nally.—Gentlemen of the Jury;—I would cheerfully have left this case to your consideration, under the direction of the Court, and have receded from my right of observing upon the evidence, if the solicitor-general had not signified his determination to reply, and animadvert upon what the witnesses on both sides have given in testimony. But this determination of the king's counsel will, I trust, impress your minds with a favourable influence towards the prisoner; it certainly suggests, that, in the opinion of those who conduct the prosecution, the facts sworn to are not conclusive against him, and that you must have doubts upon the evidence on the part of the crown; which calls upon their exertions to remove; but, gentlemen, though you will of course pay every attention to whatever arguments the learned gentleman who is to follow me may use for the purpose of supporting the indictment, yet you will still

remember that jurors are not to find verdicts upon deductions, or upon inferences from arguments of counsel, but from clear and undoubted facts, or conclusions immediately resulting from those facts, and fully satisfying their consciences beyond all question.

I am not surprised, gentlemen, that one of you was under a mistake. I allude to a question put from the box by a juror, forgetting that you were trying the prisoner, and not trying the two men who worked with him at Mr. Roe's. The cause of this mistake is obvious. You were amused for a considerable time with evidence irrelevant to the issue; with evidence respecting Weldon and Tyrrell, of their absence from work, and this for the purpose of attaching to the prisoner that conduct which was only imputable to those other men.

From this novel kind of evidence, you gentlemen will clearly divest your minds when you come to deliberate on the verdict you are to pronounce; for it would be a hard case indeed, and might bring the most innocent man to prosecution and to trial, and perhaps to conviction and to punishment, if his conduct in life, and his life itself, were to be put in risk, by evidence applicable only to other men, into whose company, his profession, his trade, or his avocation might accidentally lead him; and this is the case of my client, the youth at the bar.

I am justified when I infer, what the argument of the learned solicitor-general may be, from the evidence by which it has been attempted on the part of the prosecution to implicate the prisoner in the charge of treason.—The position will be this. The prisoner worked with other men, at Mr. Roe's—and two of these men having fled for a week, an imputation of guilt lies against all the men who worked for Mr. Roe, and of course against the prisoner. It strikes me, however, as a much clearer position, and as the true position for your consideration, gentlemen of the jury, that if the flight of these men is to be taken in evidence of their guilt, the prisoner remaining at his usual place of abode on Sunday, and going to his work on Monday, is a proof of his innocence, and is as strong a circumstance as can be collected to support a presumption of that kind.

Gentlemen, you have remarked that great pains have been taken, on the cross-examination, to sift the last witness. I suppose you never heard a man, baited as he was, deliver his testimony with more candor. He was asked, did he hear there was to have been a rising on Saturday night. Did the man suppress the fact? Did he attempt to traverse the question? No, he, without hesitation, or embarrassment, candidly acknowledged he did hear of it.—Something was insinuated to promote an idea that this honest man was brought here as a prepared witness—it failed. The prisoner's agent has character sufficient to repel that idea. That gentleman would

not prepare a witness for the value of a king's ransom—knowing the agent as I do, I am competent to bear this testimony to his honour and to his professional integrity. If the witness were brought into court, as a prepared witness, if he were implicated in the crime and in the horrors of the 23rd of July would he have told you, when asked, had he heard there was to have been a rising on that night, that he had heard of it? He did tell you he had heard of it, and he told you the name of the person from whom he had heard it—a circumstance which as it might have tended to impeach himself and to implicate the person of whom he spoke, were he a witness prepared for the occasion, he would not have divulged. It was the answer of conscious integrity. If, I say, in such a case as this, he candidly answered to the prejudice of himself, you have a right to take the whole of his evidence as matter of fact and of truth, unless the counsel for the crown produce a witness to rebut his testimony, and thereby weaken or overturn that credit which he has now established, by the fairness of his evidence.

His dress has been considered worthy of animadversion. He was asked, where he got his coat—and his credit was impeached because his coat was black—the colour of the garment was held out as a stain upon the integrity of the man.—“Where did you get that black coat?” was asked with great gravity, accompanied by a very significant look, and answered satisfactorily, in my humble opinion, and without the least appearance of mental reservation. Gentlemen, do you not concur with me in this—that it would be cruelty in the extreme, if one man should be hanged, because another man, whom he produced as a material witness, appeared in a black coat?

The witness, as he also admitted, is a labourer, but he had other means of adding to his income, exclusive of the fruits of his own manual industry. He occupies a room, and he has a wife who lets out beds for lodgers, and the profits arising from that, and the economical disposition of the man, not only enabled him to have a decent coat, but even a waistcoat, and, what perhaps may be considered evidence against his credit, a whole pair of breeches. But the black coat—where did he get a black coat?—Probably some king's counsel, learned in the law, transferred it to his valet-de-chambre—and the valet-de-chambre having sported it till thread bare, sold it to a cast-clothes man, who having again sold it to a Plunket-street broker, my client purchased it from off a peg, and converted it into a gala suit to exhibit on Sundays and holidays, and other special occasions. Gentlemen, such may be the adventures of the black coat in question; but heaven forbid a black coat should be a symbol of dishonesty; were that the case, what would become of the learned professions, and above all, what would become of that character for veracity, for which my brethren of the bar are so much celebrated.

Gentlemen, was it this circumstance that called for what you heard, a strict and minute examination of the prisoner's witnesses? They have been put to the ordeal of close and ingenious interrogations, if the thing was practicable to entrap them; but they escaped that ordeal; they passed the burning plowshares unscorched. There has nothing appeared—and for the best reason, because nothing could appear—from their answers, to convince your minds, that either the one or the other of those witnesses came here suborned. There is not the slightest impeachment to induce you to believe that the truth was not sworn by them. Every witness, the most respectable, and the most cautious and conscientious, may inadvertently slip into a trifling mistake; but there is nothing in evidence before you of a contradiction, at least of any material fact. One of you, gentlemen, put a question, and it deserves notice:—the prisoner had been used to work on Sundays at his master's shop; the question from the juror inquired, whether he worked upon the Sunday succeeding Saturday, the 23d of July, or not?—It appears he did not; and any man who recollects what kind of a Sunday that was, will not be surprised that the prisoner had not gone to work—will think him prudent and right in not going into the streets on a Sunday when the churches were not attended, when the duties of religion were neglected, when universal terror pervaded every breast; I say it is not surprising, that on such a day the artisan was not found in his workshop. But then, it has been observed, that by not working on that Sunday, as usual, he gave up his wages—What is the answer?—That no man could be so intent upon the earning of trifling wages, as to work upon Sunday the 24th of July, and in the neighbourhood too of the very spot where the rebellion broke out, with atrocious and sanguinary fury, where resentment was alive, and the street crowded with the military. It is a fact that needs no proof, for it is notorious, that no man of the working orders of the people dare appear on that day in Thomas-street, or in any of the adjacent avenues, without danger to his life or liberty. Many, who appeared in working clothes, in other parts of the city, on that day, were taken into custody: and therefore, when the prisoner heard, on the morning of Sunday, that an insurrection had broken out on the preceding night, that murders had been perpetrated, and that numbers had been taken up on suspicion, he prudently determined not to go to work on that day, but to remain, where every honest man ought to be found on such an occasion, in his own lodging.

Gentlemen, I ought to apologize for detaining you so long, and I would not have addressed you a second time, but that I would not have it understood by the poor boy at the bar, that I, for any ease of mine own, or from any other motive whatever, would derelict his cause. I stand alone in his defence—his

poverty precluded him from procuring me assistance, and this raises an additional incentive to my exertions, as it will no doubt interest you in his favour. I am to consider myself, while acting for him, as standing in his situation, and it is my duty to urge every thing that can tend to the preservation of his life, with as much zeal, and with as much anxiety as I would for my own: with all my mind, with all my strength, and with all my heart, I am bound to defend him; and where that mind appears incompetent, and where that strength appears weakened, and where that heart appears unequal to the effort it would make, the court, and you, gentlemen of the jury, will mercifully and amply supply the deficiencies. It is my hope that your verdict will this day convince the world, that these prosecutions are not carried on for the mere purpose of making examples; but that acquittal is as much the object as conviction; and the learned gentleman, who is to reply to what I have advanced, will, no doubt, consider, and accede to this opinion, that his duty goes no farther than investigation, thereby to assist you in acquitting the innocent, as well as in pointing out that undoubted and unequivocal evidence, which justice and the law call for and require, to sanction a verdict that must inflict condign punishment.

I do not affect sincerity in declaring, I considered my client as an innocent man when I stated his case; and, I am sincere, when I lay my hand upon my heart, and, from the unbiassed feelings of my conscience, declare, that nothing has since fallen from the witnesses, which in my apprehension can convince you of his turpitude, and thereby justify you to God, and to yourselves, in bringing in a verdict of guilty.

REPLY.

Mr. Solicitor General.—My Lords and Gentlemen of the Jury;—It is with much reluctance that I trouble you upon this occasion. But I feel that my duty calls upon me to observe upon the evidence, and to answer what was said by Mr. Mac Nally in his first speech upon this trial. He said, that it was the duty of the counsel for the crown, when there was a doubt, to give up the prosecution. I admit that feeling should prevail in every man's mind, and am sure I can answer for my learned friend the Attorney General, that he would have abandoned this case, if it came within the description which has been mentioned. If the evidence were not ample and sufficient to warrant a conviction, the prosecution would not be persevered in.—But when the evidence appears to be satisfactory, it is our duty to call for that verdict which the justice of the country expects. And in a few observations, I trust, I shall satisfy you, that this case is as clear as any which has preceded it during this commission.

The only question for your consideration is, what part the prisoner took in the rebellion

of the 23rd of July? It is idle and unnecessary to draw your attention to the matter preliminary to that discussion, namely, the existence of the rebellion; for the existence of the rebellion is admitted by the prisoner's counsel, the only question, therefore, is, how far the prisoner took a part in it. To prove that, there is but one witness, Forrest; whether you look to his evidence—or the manner in which he gave it—or his conduct subsequent to the transaction, of which he gave evidence, the result is equally in favour of his veracity, and is sufficient to induce you to give implicit confidence to what he stated. He was situated in a window, where any obstruction that might arise from glass was removed—the street was narrow, and the prisoner was not only a few minutes in view, but was half an hour passing and repassing—giving a full opportunity of ascertaining his features and his identity. It appears farther, that he was separated from all the rest of the party, except one person—and therefore, gentlemen, you must be satisfied, that the witness had a full and fair opportunity of ascertaining the identity of the man, independent of the other circumstances which corroborate his testimony beyond all question.

Gentlemen, you will observe, that this man comes forward under circumstances entitling him to attention. He is not animated with zeal or warmth against the prisoner—for a considerable period of time he was subdued by fear, which was a natural circumstance, considering that his personal safety was involved in the discovery. And therefore it is impossible for you to suppose that a man apprehending, that his own person was in danger, could from a corrupt motive, put his life more in hazard. It appears, that he not only stated the transaction accurately to the magistrate as he has done here; but he communicated the same facts upon the next morning to those in whom he could confide; his account upon all these occasions corresponded. He stated the circumstance of the prisoner rapping at his door and gaining admission—and though he was convinced of the identity of the prisoner, he was reluctant to swear informations, while the prisoner was at large, considering that by doing so, his life would be in danger. And therefore, gentlemen, no doubt can rest upon your minds, that he was prevented by such an impression upon his mind from coming forward, and not from any improper motive. The insinuation which was attempted by the cross-examination, that reward was the witness's inducement to come forward, is fully answered by the evidence of Murray and Price, to whom he told the transaction prior to any reward being offered or being in the contemplation of any man; and therefore the insinuation is not only answered and exposed, but you must see that it was suggested from a conviction, that the evidence was so strong, that if believed, it must be conclusive.

Gentlemen, if such be the impressions upon your minds, it must be doubly strengthened by the wretched attempt which has been made by the prisoner to account for his situation upon that night. Feeling the necessity of doing so, he produced Fleming on his behalf. Put yourself for a moment into the situation of the prisoner, and say whether an innocent man, accused of such an offence as this, would have contented himself with producing only one person from the house in which he lodged, when there are many others there, who could corroborate him, if he were true. The prisoner rests his case upon the testimony of one witness in opposition to the evidence on the part of the crown. If in case were honest, it would be more strongly supported; but I will tell you the reason why the other witnesses are kept back. If his case were founded in truth, a consistent and uniform account would come from all the witnesses; but if a false and fabricated one were made out, the second witness would contradict the first, and each succeeding one give a different narrative, and therefore the prisoner relies upon the testimony of a single witness, rather than expose himself to the hazard of a contradiction. If all the persons in the house appeared, and you were satisfied that they were credible witnesses, and they contradicted the witness for the crown, I admit it would be a doubtful case, in which of course the jury would acquit the prisoner. But when he produces a single witness only, that does not remove the impression made by the case for the crown, though proved in the material point by one witness only.

But, gentlemen, see what the testimony of the witness for the prisoner is—he cannot meet credit with you, when his testimony is so replete with absurdity and inconsistency. Can you believe, that the witness went to bed at 9 o'clock ignorant of the outrage which was going forward; when if he cast an eye from his window, he must have seen men with arms, ready to commit those crimes, which were afterwards perpetrated. No man, whether he was a loyalist, or a traitor, could shut his ears against the uproar which was raging in that neighbourhood. The witness says, that upon Saturday evening, he went to bed between 8 and 9 o'clock. You know, gentlemen, that is an evening upon which the working people seldom go to bed so early—they generally indulge in excess. However, shortly after the time he states he went to bed, the firing commenced as stated by lieutenant Brady,—the witness heard it, but he had no curiosity to inquire into the cause, he thought it was rejoicing!—Could any man listen to this account and suppose it to be true? It is an absurd and ridiculous reason—it is impossible it could be true—if they were loyal and decent people, that they could be lying in their beds, regardless of what was passing. When loyal men were alarmed for their safety, how do you account for the

apathy of this witness and the companions of his house amidst accumulated horrors? If Fleming was an honest and fair man, would he not have felt some apprehension, and some anxiety to see what the matter was? when others were filled with alarm and anxiously looking for safety, can you believe that this man would adopt a different conduct, if equally unconnected with traitors? He must have known of the insurrection, and the only way to account for his reluctance to stating the transactions of that night, is, that his own conduct would not bear investigation, and therefore he covers the whole with a veil of silence, which if withdrawn, would probably, excite as much horror as any detail you have heard; he therefore professes ignorance of the subject, in order to screen his own guilt, and to avoid stamping himself with infamy. And therefore the witness was cross-examined as to all those circumstances which the counsel for the prisoner has endeavoured to throw into ridicule. The witness was interrogated respecting his dress because he has assumed a different appearance;—his heart suggested to him, that he was coming to tell a falsehood, and therefore it was necessary to give himself an apparent credit, by exhibiting a more decent habiliement than he usually wore.

But see how the prisoner's case is supported by the second witness, I mean the clerk of Mr. Roe. If ever there was a witness who destroyed himself, that witness accomplished it—his conduct evinced the falsehood of his story. He answered every thing most slipshodly, which was inquired of by Mr. Mac Nally; but when something was discovered from his books he lost his recollection: he was then obliged to have recourse to his books, and being asked who were absent in the following week, he continued turning over the leaves, and finds his memory refreshed with facts which are not found in them—he tells a story of cutting oats, and obtaining a pass, which could not have happened. Where was a pass to be had upon the next morning? Many days passed, before any truly loyal man took the slightest step towards obtaining a pass; and therefore this witness evidently, tells a falsehood, by applying that to the day immediately following the insurrection, which could not have existed for several days after. He had lost all recollection of the man, and the circumstances attending his conduct; he therefore refers to his book for information, and the moment he sees the name (for the book contained nothing more) he told the anecdotes you heard. Is that a probable account? Or, rather, are you not convinced that it is a false and invented story?

See, then, the remaining part of the case. Mr. Mac Nally pressed upon you, that I would rely on the guilt of the prisoner, because two men who worked in the same yard fled from a conviction of their crimes. Gentlemen; if I did so, I should not deserve your

attention. We did not examine the witness with such an absurd purpose; but by an examination into minute particulars, we endeavoured to detect the falsehood of the witness, and to show you, that he could not stand that test which a fair and honest man always can. We examined with regard to the other two men, to show, that they, whom the witness had represented as peaceable and loyal men, were directly the reverse, and thereby exposing his total want of veracity.

Now, gentlemen, see what was the conduct of the witness for the crown. He spoke of the matter originally with reluctance, from an apprehension of personal danger; but he gave the same account which he has now supported, from the best motives, and from a conviction, that the person he accused, was guilty of treason. The witness for the prisoner tells you an incoherent and inconsistent story; which could be corroborated by many others, if true. Why not produce Mr. Roe, his employer? Why not produce Logie, who had early intelligence of this rebellion, which he had kept from the ears of the magistrates, and from government? Why not produce them? Because they could not confirm the account. Gentlemen, when you take all these circumstances into your consideration, you will see that this prosecution is far from what has been represented. It is not one which the crown should abandon; but one that calls for your decision; not presuming to anticipate what it may be, I am sure it will be such as to give satisfaction to the country. The learned counsel who preceded me, said, he expects an acquittal. I do not condemn him for saying so, being concerned on behalf of the prisoner; but his opinion is not that by which you will abide; you will be influenced only by the solemn obligation you have taken to decide according to the evidence. I might say, that this is a case which warrants a conviction; but my opinion is not to weigh with you. But I shall strongly recommend to you, if you have a doubt, to let the prisoner have the benefit of it. It must, however, be a rational doubt, exciting a feeling in your minds, that the prisoner might be innocent. But if you shall be of opinion, that the witness is not mistaken with respect to the prisoner, you know, your duty to your country is to convict him.

Your humanity and your mercy have been appealed to. Whether these qualities should prevail over the dictates of your judgment, and the principles of law, you will determine; and I am satisfied you will give such a verdict as will do equal justice to the prisoner, and the public at large.

SUMMING UP.

Mr. Justice Finlason.—Gentlemen of the Jury.—The prisoner is indicted of high treason, first, in compassing and imagining the death of the king, and secondly, in raising, levying, and making (in conjunction with se-

veral men in arms) public insurrection, rebellion and war against the king within this realm. This last species of treason clearly comprehends the other; for if the prisoner be guilty of levying war and insurrection against the king, he is guilty of compassing his death, and it is to this last species of treason, that of levying war, to which the evidence in this case principally applies; and if the evidence be believed, there is full and clear evidence, that there existed upon the 23rd day of July last, an insurrection and rebellion in the city of Dublin. It is not denied on the part of the prisoner, and therefore as a good deal of the evidence was applied to that fact, it should seem to be unnecessary to trouble you with a detail of it. But if you have any doubt upon it, I will state the evidence to you.

The *Jury* said, they had no doubt, and that it was not necessary for his lordship to repeat that part of the evidence.

Then, gentlemen, the only remaining question is, whether the prisoner had any hand or concern, or took any part in the rebellion? Whether he was seen on that night with a pike in his hand and acting in the manner stated to you by Forrest?—for if he was and acted in that manner, there is no doubt of his guilt. The first witness examined to this fact, was John Forrest.

[Here the learned judge read the testimony of Forrest and of the subsequent witnesses from his notes, and then proceeded.]

This, gentlemen, is the whole of the evidence, and the point for your inquiry is, whether the prisoner took any part in the rebellion, and rests solely upon the credit which you give to Forrest. He is the only person who saw the prisoner. He stands, as to that fact, uncorroborated: though he was capable of being supported by direct evidence, namely by the testimony of his daughter, who was along with him at the time, and as he says, saw the prisoner and the man along with him—she is not produced nor any cause assigned for her non-production; and therefore the cause rests upon the testimony of this man, unsupported and uncorroborated by direct evidence.

He is however supported by evidence which shall be laid before you, not indeed of a direct kind, but certainly deserving your attention. His evidence, on the other hand, stands liable to objection, as not tallying exactly with the evidence of lieutenant Brady: they differ as to the degree of light, and they differ as to the volleys which were fired—lieutenant Brady says, there was but one volley fired, and afterwards there was an independent fire—but Forrest says, there were two volleys such as rebels could not fire, but was the fire of regular troops. How far Forrest might mistake an independent fire for a volley, or whether he could distinguish, that it could not be the fire of rebels, but the fire of regular troops,

will be for your consideration, in weighing the degree of credit due to his evidence.

Now, gentlemen, compare his evidence also with lieutenant Brady, respecting the darkness of the night: Lieutenant Brady says, it was so dark, he could not distinguish a man's face at four yards distance; Forrest says, he distinguished the face of the prisoner from the place where he was, ten feet above the level of the street, as he looked through a broken window:—Lieutenant Brady says, he could not distinguish any particular house in Thomas-street, so as to point it out again; he says, that where he had the contest with the rebels, he could only distinguish the rebels by their noise, and he actually surprised one rebel, by coming unawares upon him; so that there must have been a great degree of darkness in that case. How then Forrest could accurately see the face of the prisoner as he walked up and down the street, will be matter for your consideration.

If you think he does not deserve credit, it must be upon the ground of untrue swearing. But before you come to that conclusion you will observe that his testimony is in some degree confirmed by alderman Manders, who goes a great way to support him, though not directly. There does not appear to be any pique, or malice, or jealousy, or anger between the witness and the prisoner, that could induce the former to tell a false story. The alderman tells you that Forrest came to him a week before he swore his examinations and told of this matter, but that he declined then swearing his examinations being as he said afraid of being murdered; but that when the prisoner was taken up, then Forrest swore the information. This goes strongly to support him. He is also confirmed by the evidence of James Murray and Price, his shopmates, to whom he told the same story, that he has done this day upon the table; to the one upon the Sunday, and the other upon the Monday following the rebellion. This contributes no doubt strongly to support his evidence; and it receives farther strength from this circumstance, that the introduction of the evidence of Price and Murray seemed to arise from his mentioning them upon the table, and their being thereupon sent for out of court, and certainly if that was the case, and that they gave their evidence without any previous communication with him, or knowing that they or either of them would be called forward, it adds greatly to the weight of his evidence.

Thus the case stands upon the objections to the evidence on the part of the crown, and the support it receives.

There is evidence given on the part of the prisoner which you will also sift and examine; and if you believe it, all probability of guilt will be removed from the prisoner. It is the best evidence the nature of the case can admit of. But if you believe it to be fabricated, it not only carries no weight in favour of the priso-

ner, but makes much against him. But all that is matter for your consideration. This I must also observe in favour of the prisoner; that he continued a working man, openly and publicly for a fortnight afterwards, and he has a good character, which is only of weight according as you have a doubt upon the case.

Upon the whole, gentlemen, if you believe this man was armed with a pike that night, with the intention charged against him, he is guilty. But if you have any reasonable well-founded doubt upon the evidence of Forrest, it is always the duty of a jury, in such a case, to lean to the side of mercy.

The Jury retired, and after deliberating thirty-three minutes, returned a verdict of Guilty.

The prisoner was recommended.

On Wednesday, the 14th of September, the prisoner was brought up, together with five others, namely, Donnelly, Farrel, Begley, Kelly, and Hayes. When Mr. Baron George pronounced sentence upon them all, after a very impressive and affecting exhortation.

The prisoner Walter Clare, was afterwards respited.

660. Trial of FELIX ROURKE for High Treason; before the Court holden under a Special Commission at Dublin, on Tuesday September 6th: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.†

Tuesday, September 6th, 1803.

Judges present:—Lord Norbury, Mr. Justice Finucane, Mr. Baron George, and Mr. Baron Daly.

Felix Rourke, John Killen, and John Mac Cann, were put to the bar for trial:—they had been arraigned on the 31st of August, upon the following indictment:—

County of the City of Dublin to wit } THE jurors of our lord the king upon their oath present that Felix Rourke late of Thomas-street in the city and county of the city of Dublin yeoman John Killen late of Thomas-street in the city and county of the city of Dublin yeoman and John Mac Cann late of Thomas-street in the city and county of the city of Dublin yeoman otherwise called John Mac Kenna subjects of our said lord the now king not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil as false traitors against our said lord the now king their supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and intending the peace and common tranquillity of this kingdom to disquiet molest and disturb and the government and constitution of this realm to change subvert and alter and our said lord the king from the royal state title power imperial crown and government of this kingdom to depose

and deprive and our said lord the present king to death and final destruction to bring and put they the said Felix Rourke John Killen and John Mac Cann otherwise called John Mac Kenna on the 23rd day of July in the 43rd year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there their supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death and that to fulfil perfect and bring to effect their most evil and wicked treason and treasonable imaginations, and compassing aforesaid they the said Felix Rourke John Killen and John Mac Cann otherwise John Mac Kenna as such false traitors as aforesaid on the said 23rd day of July in the 43rd year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did conspire confederate and agree together and to and with each other and to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection and war against our said sovereign lord the king within this realm

And afterwards to wit on the said 23rd day of July in the said 43rd year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid they the said Felix Rourke John Killen and John Mac Cann otherwise called John Mac Kenna, as such false traitors as aforesaid in further prosecution of their treason and treasonable purposes as aforesaid did arm themselves

* From the Report of W. Ridgeway, esq. barrister at law.

† For the preliminary proceedings see Kearney's case, ante.

with and did bear and carry certain weapons called pikes with intent to associate themselves with divers other false traitors armed with guns swords and pikes whose names are to the said jurors unknown for the purpose of raising levying and making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king within this kingdom

And that afterwards to wit on the said 23rd of July in the said 43rd year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of Dublin aforesaid the said Felix Bourke John Killen and John Mac Cann otherwise called John Mac Kenna as such false traitors as aforesaid with a great multitude of persons whose names are to the jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of them the said Felix Bourke John Killen and John Mac Cann otherwise called John Mac Kenna against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

And the jurors of our said lord the king upon their oath do further present that the said Felix Bourke John Killen and John Mac Cann otherwise called John Mac Kenna being subjects of our said lord the now king and not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said sovereign lord the king and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom on the 23rd day of July in the 43rd year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom and in order to fulfil and bring to effect the said traitorous compassing imaginations and intentions last mentioned of them the said Felix Bourke John Killen and John Mac Cann otherwise called John Mac Kenna afterwards to wit on the said 23rd day of July in the said 43rd year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names

are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully maliciously and traitorously assembled, and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king their supreme and undoubted lord contrary to the duty of the allegiance of them the said Felix Bourke John Killen and John Mac Cann otherwise called John Mac Kenna against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

The prisoners severally pleaded, Not Guilty, and said they were ready for their trial

They were now asked, whether they would join in their challenges, which they refused, and thereupon Felix Bourke alone was put to his challenges:

The following jurors sworn, after nineteen peremptory challenges by the prisoner, and fourteen set by on the part of the Crown:—

William Moore,	John Woodrooff,
James Brush,	Francis Warren,
John Stanly,	Hickman Kearney,
Luke Stock,	Alex. Clarke,
James King,	Jn. Kearns, Graffon-st.
Benj. Simpson,	Luke Connor.

The *Counsel for the Crown* were the same as on the former trials, with the addition of Mr. Prime Sergeant, who had hitherto been prevented from attending in consequence of going the Munster Circuit as judge of assize.

The *Agents for the Crown* were the same as in the other cases.

Counsel for the Prisoner.

Mr. Curran [afterwards Master of the Rolls].

Mr. George Ponsonby [afterwards Lord Chancellor].

Assistant Counsel.—Mr. Mac Nally.

Agent.—Mr. W. L. Walker.

Mr. O'Grady opened the indictment.

Mr. Attorney General.—My lords, and gentlemen of the jury; I shall not trespass upon your time with many words; because it will be only necessary to give you a very short view indeed of the evidence which will be produced on the part of the crown to substantiate the charge in the indictment.—By that indictment the crime of high treason is imputed to the prisoner, and we shall first produce evidence to satisfy your minds that a treasonable and rebellious insurrection existed in Dublin, upon the 23rd of July last. And as I think upon this part of the case, I am at liberty to say, that you can

not by possibility find any difficulty, I shall not trouble you with a statement of the evidence upon it, but will shortly proceed to those circumstances which will manifest the part which the prisoner acted in that treasonable insurrection, and the extent to which he participated in the design of the conspirators who contrived it.

Gentlemen, it will appear, that many persons were met by the rebels on that evening, and forced to take up arms, and apparently to join them. One of these was a person of the name of Mahaffey, who had been formerly a private in the Kildare militia, and had afterwards followed the occupation of a pedlar. A person of the name of Ryan, who followed the same occupation, was in company with him,—about the head of Dirty-lane, or Bridgefoot-street, these two persons were met by the prisoner, and he, not being one of the ordinary rank and file men, but of a superior description, and assuming a superior command, immediately called upon them to arm themselves with pikes, and to join his party. He threatened them with a blunderbuss if they resisted for a moment. Some little hesitation having appeared, he continued his threats; and being reinforced by another man who carried a blunderbuss also, Mahaffey and Ryan were hurried down Dirty-lane to the dépôt where the arms were collected, and both were obliged to take up pikes. Ryan is a very feeble man, labouring under a permanent infirmity. He was so agitated, that he became confused, and could not so accurately distinguish what passed as Mahaffey. But if one half of what I am instructed they will depose shall receive your credit, it will fully substantiate the guilt of the prisoner.

We did wish in this case, in order to save the public time, to have tried Killen and Mac Cann together with the prisoner, because the evidence is equally applicable to all. But it was not thought prudent by the prisoner to have his trial confounded with others, and by his declining to join in the challenges, we find it expedient to proceed against them separately. But the prisoner is entitled to the privilege exercised, and no unfavourable conclusion should be drawn from the circumstance of his having insisted upon it.

Shortly after they were armed, and were proceeding from the dépôt, they met the bodies of some murdered persons,—a watchman, I think, among others. The party was headed by the prisoner Rourke, who was sometimes called general, sometimes colonel, and sometimes captain. All agreed that he had a considerable command, though the precise nature of it was not known to them all.

Upon coming up to the bodies, one of which was still groaning upon the ground, Killen with a blunderbuss fired into one expiring body, and Mac Cann thrust his pike into another. While they were thus engaged,

something more worthy of their gallantry appeared—a defenceless trooper happened to pass that way—Rourke, the prisoner, fired upon him with a blunderbuss, and both horse and man were killed; Rourke called upon his men “to do their duty and free their country.” He was then giving an example of that freedom to which he aspired, the privilege of killing the innocent and unoffending, and putting the power of the country into the hands of assassins. There was another leader amongst them with a military hat and scarlet uniform—they declared their object was the castle, and that the city would immediately fall into their hands.

Gentlemen, I do not think it necessary to detail the facts more minutely; nor have I intentionally over-stated any thing; I was desirous only to render the evidence clear to your minds, rather than to make any impression upon your feelings. The evidence is too clear to require any colouring, and you would not be influenced by any colouring it might receive; confine your attention to the evidence, and draw your conclusion from nothing else; mindful of your oath, and regarding your consciences, you will discharge all former impressions from your minds, and pronounce such a verdict as will do justice to the prisoner and your country.

Edward Wilson, esq. sworn.—Examined by Mr. Prime Sergeant.

The witness gave the same account as upon the former trials.—[*Vide Kearney's case, p. 711.*]

The witness particularly mentioned, that one of the watchmen was killed at the head of Dirty-lane.

[He was not cross-examined.]

Donough Mac Creight, esq. sworn.—Examined by the Solicitor General.

Do you recollect the 23rd of July last?—I do.

Did you arrive in this city upon that evening?—I did.

How?—In the canal-boat.

About what hour did you arrive?—I arrived in the harbour by the clock there twenty-three minutes before ten.

To what place did you proceed from the harbour?—I walked the direct way down James-street and into Thomas-street.

When you arrived there, did any thing particular happen to you?—Yes, sir; I met many people running, and saw a great deal of confusion. I asked what was the matter; some of them passed without answering me; others said they did not know.

Did you meet any who informed you what was the matter?—When I came near the narrow entrance into Thomas-street, I was surrounded by five or six men with pikes.

Did they say any thing to you?—They all called out, almost at the same time, “Where

I came from? what was my name? and what was my business?" without waiting for a reply: I answered, that I was a country gentleman, and had come to town about law business, and that I was not a military man; for when I saw the pikes, I knew how the business was. One of them struck me at the time.

With what?—With the handle of a pike. I was upon the flags at the time, and I fell against the wall of a house. Another asked me "Was I a friend?" I said I was. I would have fled, but was so near the houses I could not escape. When I said I was a friend, one of them gave me a pike, and desired me to fight my way; they then pushed me on with pikes, blunderbusses, and pistols, and pushed me into the front.

Then they had blunderbusses and pistols? —They had, and some few of them had swords.

The greatest part of them had pikes?—By much the greatest number.

When you were placed in the front, where did you proceed to?—They walked down Thomas-street.

What was the first circumstance which occurred afterwards?—I had been a considerable time with them, before they got as far as the church; between the entrance into Thomas-street and the church, I saw a great number of pikes thrown out of a window upon my left hand, and such as had not pikes helped themselves there.

What happened next?—When I came near the corn-market, between Bridgefoot-street and the market-house, I saw a dragoon piked on the flagged way; he was on foot. I was ordered to run, as if to join the foremost party, or that they saw the dragoon, for I did not see him till I got very near him, he fell close at my feet, and one of them put a pike across my breast, and desired me not to stir; they piked him as he fell into the channel, and others as they came up drove their pikes into him.

Was he moving at that time?—No, he was quite motionless; these who came up asked for his sword; "have you got his sword?" was the general cry among them.

How long did you remain there?—Several minutes.

What happened then?—I was ordered to proceed to the market-house; there was great confusion and noise, for they were not in one body, but in various parties.

When you got to the market-house, mention any thing that happened?—After some time spent in going back and forward, a man appeared in a scarlet uniform, with a cocked hat and a sword drawn in his hand.

Was he on foot or on horseback? —He was on foot. I forgot to mention that I saw a horse, as if wounded, crawling towards a gateway, and having heard that there was a dragoon and his horse piked, I supposed that was his horse.

Was there a bridle and saddle on the horse? —There was.

Did you observe any accoutrements or horse furniture?—I did not.

When this man in a scarlet uniform came up, what was he doing?—He seemed to be very active in going up and down, endeavouring to form them into one body, and encouraging them to come on; he said "that the castle would be theirs, and that the town would fall in half an hour." After some little time, he observed that the rear did not keep up with the front, and he said, they would be cut off by the army, if they came upon them; they replied "Damn the army, we are not afraid of them, we will fight them."

That took place beyond the market house? —Yes, in the narrow passage at Cutpurrow.

What number of people, as well as you can judge, did the party consist of?—I have not been in the habit of reckoning crowds of people; there might be from three to five hundred; they seemed to be a numerous party, and were spread out in the streets in great confusion.

Did you observe any thing after they said they damned the army?—The man in the scarlet uniform said the rear were not coming up, and he went to collect them; they went back from one to two hundred yards towards Thomas-street.

What happened when they returned?—A carriage drove up, and they stopped the carriage; they all collected about it; they asked the driver, who was in it? he answered, but I did not hear the name he mentioned; it was a postillion, and the horses were much frightened, and he could not easily keep them quiet.

Was it a gentleman's carriage?—It was; they threatened the man, if he did not keep the horses quiet; he either got off the horse, or was knocked off; they opened both doors, and I could distinctly see two men and a boy sitting in the carriage; the horses got disengaged from the carriage, and I took advantage of that circumstance to get off; one of the party seemed to watch me, and having military boots on, when others came up, they used to say, "watch the fellow with the boots;" the horses making some confusion, I took advantage of it, as the only opportunity, for every avenue and lane was guarded by them, and when I turned towards any of these passages, I was asked who I was, and sent immediately back, saying that was not my ground, but to keep the middle of the street.

On the occasion of the confusion you mention, did you effect your escape?—I did; I went down St. John-street, and then went towards the barrack; but I saw a crowd of men in the street, and I went from them towards the castle-yard.

[Not cross-examined.]

Lieutenant *Coulman* sworn.—Examined by Mr. *Townsend*.

The witness gave the same testimony as before. [*Vide Kearney's case, p. 719.*]

[Not cross-examined.]

Serjeant *Thomas Rice* sworn.—Examined by Mr. *O'Grady*.

The witness proved the proclamation as before. [*Vide Kearney's case, p. 722.*]

Michael Mahaffey sworn.—Examined by Mr. *Plunkett*.

Turn about, look at the prisoner at the bar, and say whether you know him?—I do, sir.

Were you in Dublin on the 23rd of July last?—I was, sir.

About how long had you been in Dublin before that day?—Something better than twelve months.

How long had you remained in Dublin before that?—I remained till Christmas, when I went to Drogheda, and was in town continually from that time.

What business did you follow?—I sold goods.

In what manner did you sell them, in a shop, or did you hawk them about?—I hawked them about.

You were a pedlar?—I was.

Where did you lodge?—In Dirty-lane, at Mrs. Doyle's.

Had you any friend, or comrade that lodged there also?—I had.

What was his name?—John Ryan.

Were you employed that day in the usual manner of selling goods through the streets?—I was.

Who was with you?—John Ryan.

At what time did you return to leave your goods at home?—About eight o'clock.

Did Ryan return with you?—He did.

Did you leave your goods at your lodging?—I did.

Did Ryan also?—He did.

After that did you and Ryan go out again?—We did.

What was the reason of your going out again?—We were consulting about what we would buy, and we went out to walk, to go to a woman who owed Ryan some money.

Did you go to her?—We had walked part of the way, but thought it rather late, it was too far off.

After you had determined not to go to her, in what direction did you proceed?—We returned towards our lodging.

In what direction?—From the market-house in Thomas-street, towards Dirty-lane.

What happened then?—I was stopped by Felix Rourke.

Do you mean the prisoner at the bar?—I do.

Had you seen him before?—I had about six weeks before.

What did he do?—He ordered me to go down Dirty-lane, and when I stood on my foot to know the reason of it, he drew a blunderbuss from his bosom, and said he would blow the contents through me, if I did not go smartly; he drove my comrade down in like manner.

What did he do to your comrade?—He gave him a punch in the back and drove him down in like manner.

Did any other man come to his assistance?—There did a man about five feet six inches, armed with a blunderbuss and we saw a great crowd coming from the lane with arms; we thought to make our escape, when the other man who came up cocked a blunderbuss and swore he would shoot us.

What did you and your comrade do, in consequence of that?—My comrade was drove down and Felix Rourke had a suspicion that I would run away and he took me by the collar; my comrade had a foul stomach, and began to vomit near a wall.

Was he subject to any disorder?—He is subject to the falling sickness, and he has had it three times in the gaol since.

What happened afterwards?—As soon as I got down to where the men were piking—

Whereabouts was that?—Mostly opposite Marshal-lane, he let me go and he ordered his men "to do their duty and free their country."

You say they were piking, what do you mean by that?—They were piking two men; I saw the body of one, and the head of another; and they piked them, and I heard them groan.

Was this at the time Rourke desired them to do their duty, and free their country?—Yes sir, that was the very time.

Did you see the faces of any of the other persons so as to know them?—I did, I saw a man, who was called John Killen, and another of the name of John Mac Cann.

Had you seen those persons before?—I had.

What did you see them do?—I saw Killen, just as Rourke let me loose, dart his pike into the body of one of the men, who was lying, and in a moment I looked over and saw Mac Cann fire into the body of the man, whose head I had seen, and Killen said, "we have done their business," or "their business is done," I do not recollect which.

Did you get a pike?—I did.

Where?—They were thrown out of a door or a window in the place where the store was.

Did Ryan get a pike?—He did.

Was that before or after the men were piked?—It was after; in consequence of their being so active in this business, and they had such an appetite for it; we did not get pikes till it was done.

Were there great numbers armed with pikes?—There were.

Where were you led after?—The prisoner

brought us on marching in front, and another man with a three cocked hat, and who was afterwards dressed in regimentals.

To what place did you go?—Towards Thomas-street.

How was Rourke dressed?—He was dressed with an outside white coloured riding coat, under which he had a dark green coat with plated buttons, and seemed to be newly made.

Can you form any guess, what number the party consisted of at this time?—I cannot; it was a large number.

Who appeared to have the command of the party?—Rourke had as much command as any of the party; he had as much as the man with the cocked hat.

From what circumstances do you collect that he acted with as much command as others? did they address him by any name?—Some called him "captain;" but the countrymen called him "general."

Then there were countrymen there?—There were from towards Naas.

After you got into Thomas-street, what next happened?—As soon as we came to the corner, the watchman there was making some noise, and the prisoner ordered his men to take and pike him, which they did.

Did you see any other transaction afterwards?—I did, sir; I saw him going back and forward with the people, and beating back and forward in the street, and two or three men were killed, and a horseman was also killed.

Mention the particulars respecting the horseman?—I saw this man, the prisoner, approach the horseman, and ask him where he was going? the man was in such a terror he could not answer; upon which, Rourke fired at him, and he fell from the horse, and they piked both the man and the horse; I saw John Hayes pike the horse.

Was the horseman dressed in any particular way?—He was dressed in a dragoon's uniform.

Jury.—Had he a sword drawn?—No, sir, he had not.

Mr. Plunket.—After this, what occurred in Thomas-street?—The horseman was the last person I saw killed: they continued beating back and forward for some time.

Did you and your comrade remain with the party all the time?—We were keeping hold of each other's hands, watching for any open through a lane to escape with our lives.

Where did you proceed?—We beat down towards Meath-street, and there we got off.

How did it happen that you got off there?—There were four men and my comrade and me who escaped.

How long after you got down towards Meath-street, did you escape?—Almost immediately; for after the horseman was killed, they began to scatter.

Where did you go to?—We ran down Meath-street, and went towards Tallagh.

Did the four men go along with you?—

They did for some part of the way, and two of them said they would go back and see how the town was.

Did you carry your pikes with you?—We did, for fear of those four men.

How long did the other two remain?—Till morning.

Did you see any fighting?—No; but we heard the army fire when we were leaving town.

What did you and your comrade do with your pikes?—When we got into the field, we threw them away, and the rest of the men did the same.

Where did you go to?—We did not know where we were going to, not knowing the country; but we got to Tallagh-hill.

Did you go to any other place? where were you taken?—In Mountrath.

Was your comrade taken also?—He was. Upon what day?—On Tuesday; because we were shy of going through the country.

By whom were you taken?—By the magistrate of the town, to whom I told I was a Dublin that night, and I told the same to lord Castle-Coote; I told the truth to him.

Michael Mahaffey cross-examined by Mr. Curran.

You, sir, by what you say, were certainly present with those people, whoever they were, who committed the murders you have described?—Yes, sir.

And at the time they were committed, you were armed with a pike?—Yes, sir, in part of it, after coming up through Dirty-lane.

In endeavouring to make your escape, did you go as far as Tallagh-hill?—I did, sir.

Had you been often there?—No, sir.

Had you been there before, sir?—Never.

What object had you in going to Tallagh, for that is not the way to Mountrath?—Because I was making off with my life, my comrade and I; we had no call at all to the business.

How soon after you were taken, were you brought before a magistrate?—I was very soon brought before a magistrate, and afterwards before lord Castle-Coote, the colonel of the regiment.

Did you tell him every thing you swore to-day?—I did, from time to time.

How do you mean from time to time?—I told him of Felix Rourke and John Hayes.

When did you tell him of them?—When I went to him first.

But you did not tell him then all the other matters?—No.

How many times were you examined, before you gave the whole account?—I cannot tell.

But you were examined divers times?—Yes.

Were you examined several times on the same day, or upon different days?—Upon different days.

How many days altogether?—I cannot say,

there were a good many times; there were three or four times, it was a thing I was not to keep an account of.

How many times were you examined before lord Castle-Coote?—I cannot say.

Were you not examined two or three times before him?—I was, I believe.

You cannot say how many more times?—I cannot.

Were you put into prison?—I was.

Where?—Into the Market-house at Mountrath.

How long did you remain there?—That night, and part of the next day.

Were you and your comrade examined in presence of each other?—No, sir.

You were examined separately?—We were.

Were you examined thus upon one day by lord Castle-Coote?—I cannot say; he brought me back, I think, to the best of my knowledge, after being examined, to examine me again.

Then you were examined the third day?—I cannot say as to that.

Did you not say, that he examined you three or four different times?—I cannot say how many times I was examined.

Did you not say, that you were examined three or four different days before lord Castle-Coote?—If I did so, it was right.

Do you mean to say, that you do not know whether you swore truly or not, when you said you were examined upon three or four different days?—I cannot say, I was examined several times, and kept no account; I did not think to be questioned in this manner.

Upon which of these days was it you first named Rourke, the prisoner? was it on the first day that you swore?—Yes.

Did you name any other person on the first day?—I did.

Did you name all the persons whom you have mentioned this day, upon the first day you were examined?—All on the same day?

Do you not understand the question?—Did not I tell you, I was examined more days than one?

Then you mentioned only Rourke upon the first day?—I did; and the man who came to Rourke's assistance.

Do you not think, that lord Castle-Coote had a bad opinion of your story, when he sent to examine you three or four different times?—I told him I could not remember all their names; I told him I was taken at a *non-plus*, and he bid me think of the people.

Did he say that to you?—No, but I told him how I was, and he bid me think of the people.

Then when you spoke of being at a *non-plus*, you must have said that yourself; now tell me, what did yourself say to you?—He asked me, why I could not give a better account, and desired me to think of it.

Then though you mentioned all these facts, and named Rourke and Hayea, yet he asked you why you could not give a better account?—He did.

This was upon the first examination?—Upon the second.

When did you mend your account by naming John Killen, was it upon the second day you named him?—I am not sure.

What addition did you make to the story upon the last examination?—I cannot tell.

Upon what day of the week were you remanded to Dublin?—I was sent from Maryborough on Sunday.

Do you mean the Sunday following your arrest?—Yes.

From what place?—From the gaol.

What gaol?—From Maryborough gaol; I think it was Sunday.

Where were you born?—In Frankfort, in the king's county.

You are a pedlar?—Yes.

Was that your first occupation?—It was my first and last.

I thought you were in the Kildare regiment?—So I was; my uncle was in the regiment, and I used to sell things betimes, and a serjeant and a corporal knew me.

Is it any part of the accoutrements of that regiment to have blocks of wood tied to the men's feet?—In respect of not keeping myself clean.

Then it is customary in that regiment to arm their heels with blocks, I was not asking you about any thing dirty; but you say you were ornamented with wood, pray let me ask you was it a washing tub?—It was a piece of wood.

Was it hollow, so that you might wash a shirt in it?—It was a piece of timber.

How often had you a log book of that kind attached to you?—First at Laughlinstown camp, next at Balbriggan.

Were you anchored in that way at any other place?—Not that I recollect.

I should be glad to know, whether you were ever logged in that manner upon any charge of deceit?—No, I never could know of it.

Had they any pet name for you such as a ring-dropper?—No.

Did you ever hear, that they sneeringly called you names, and charged you with selling pinchbeck rings as gold?—I never heard of such names, I sold pinchbeck rings without doubt.

I cannot say, in point of law, if a man had a pinchbeck, or an iron ring, it would be criminal to sell it as of a better quality?—I never sold them for any thing but pinchbeck, I never sold them for gold.

I do not say that you did, but were there not some who charged you with selling them as gold? did they not surmise that?—They did, and how could I avoid it? I never sold any as gold, and I have persons here who know my character.

Was it not the general reputation you had in the regiment?—I cannot answer as to that.

Did not all the regiment say it of you?—No, they did not all; which of them would

buy a ring of me without having it examined?

Did not most of them entertain the opinion of you, which I have mentioned?—Many of them did, because they had a spleen against me, for having more money than they had, and not treating them with drink.

You said, that many harboured that unfavourable opinion of you?—Many did.

Pray were you ever as much inclined to your cups, as you have been to rings? did you ever make any promises against drinking?—Drinking!

Yes?—No, sir; I did not understand you about cups.

I ask you, did you ever take any oath against drinking?—I did.

Then, I ask you, whether did you keep to the oath, or to the drink afterwards?—I kept to the oath always.

Do you mean to say, that when you took an oath against drinking, for a particular time you kept the oath, until the time was expired?—I did.

And never transgressed, save the contrary?—I had a pocket book, and swore upon it against drink; I told some men whom I understand are in court to appear against me, that it was no oath, and I might drink when I pleased.

So you swore upon a pocket companion, and you persuaded yourself it was no oath?—I generally left myself an allowance.

An allowance to break your oath?—I reserved myself a compliment.

Pray what kind of civility was it?—Sometimes two pints and two glasses.

Of what?—Two pints of porter and two glasses of spirits.

How often did you make this vow against drinking, and how often did you break it?—Twice in consequence of the allowance being too large.

Was it in consequence of your getting sober you resolved to be drunk?—It was all one.

Where is the little book?—God knows where it is.

So you neither kept the book nor the oath; by virtue of the oath you have now taken, was it not a little pocket manual upon which you swore?—What manual?

A little prayer-book, a mass-book?—By virtue of my oath it was not.

Were there no leaves in it?—There was nothing in it but the bills of the tradesmen I dealt with; I can neither read or write, and could not use such a book as you mentioned.

But you were sure that was no oath you swore against drinking?—I was advised to do so.

Did you think you were taking an oath that would bind you?—I cannot say it was an oath, having no contents in it.

Then you wanted to guard yourself against drinking by taking an oath that was not binding?—I thought it was as good as if it was upon a large book, and if I broke it 'twas

a matter of no great consequence; it was no harm to swear upon a pocket book.

How do you know they were bills which were in it?—No more than as I got them from the merchants.

Do you know what the book was upon which you swore to day?—I did.

What was it?—The holy evangelists.

But you acknowledge you took an oath against drinking, and did not keep it?—There was no contents in it.

What is the book of the holy evangelists?—I conceive it a solemn oath.

What are the contents of it?—A man's life lies in it.

Is that all you know about it? by whom were you first examined after you came to Dublin?—I was brought first and foremost to the castle.

How soon after you were brought to Dublin were you taken there?—In the course of some time.

How soon after?—I cannot tell, Mr. Ser came for me and brought me down to the castle.

Were you ever charged with committing frauds by dropping rings, and pretending to find them in company with other persons?—No, sir.

A Juror.—When you made your escape from Thomas-street, you went to Tallich, through the fields; did you carry your box with you?—No, sir, all the money we had was half-a-crown.

John Ryan sworn.—Examined by Mr. May.

Are you of any trade or do you carry on any business?—Yes, sir, I used to sell some handkerchiefs through the town upon my arms, and little waistcoats.

Then you are a sort of a pedlar?—Yes.

Where have you followed your business this year past?—In Dublin mostly.

Were you in Dublin upon the 23rd of July last?—I was.

Where had you lodged before that time?—In the Talbot-inn, in Thomas-street.

Had you a companion?—I had.

What was his name?—Michael Mahaffey.

Did he sell goods with you, and was he much with you?—Yes, sir.

Where were you in the evening of the 23rd of July, about dusk?—I was coming up the corner of Dirty-lane.

Was any person with you?—There was Mahaffey.

Did any thing particular occur?—I thought I observed a greater crowd than usual.

Was any thing done either to you or to Mahaffey?—We were stopped there.

Was it a man or a beast that stopped you?—A man.

What did he say?—He gave me a punch and drove me down. I was going to the left-hand side, but was turned down Dirty-lane.

What became of Mahaffey?—He was turned down too.

What did the man punch you with?—With his fist.

Are you subject to any infirmity?—I am subject to the falling sickness.

Were you well and sober upon that night?—I was sober, but not well.

What were you turned down Dirty-lane for?—When I got the punch, I turned round to know the reason of it, he pulled out a blunderbuss; he wore a big light-coloured riding coat; he cocked the blunderbuss, and my companion Mahaffey called out to him not to kill me.

You say you were not well that night. Did you become worse at any particular time?—I did, when another man came up to his assistance.

Had he any arms?—He had a blunderbuss open to the world.

Did he say any thing?—He said he would blow the contents through us; I made off to the wall, and was seized with an empty straining of my stomach, having nothing to throw off, and my eyes lost their sight.

Then you were very ill against the wall?—I was.

Did it last long?—I cannot tell, but I heard a shot fired, and I roared out to my comrade.

Did you call him by name?—I did.

Did he come to you?—He did, and took me by the hand, and said our lives were gone.

Did you shortly recover your sight, or raise your eyes so as to see what was going on?—I saw a parcel of men with white handles darting along.

What did they appear like?—Like a mob of men.

What had they in their hands?—Pikes.

When you recovered what happened?—There was a pike shov'd into my hand, and another into Mahaffey's, by the man who forced us down.

Were there a great many people there?—There were.

What became of you next? which way did you go?—We were drove up to Thomas-street.

Do you know how?—We were shoved up.

Was the crowd behind you?—There were some before and some behind, though I did not venture to look back for the world.

Did you see any person lying there?—I saw a person who looked like a soldier.

Was he dead?—As far forth as I could judge he was; he had white breeches and waistcoat, and I think he had garters.

Did you see any other?—I did.

Was he a soldier?—No, but a watchman at the corner, who said "What is this," and they gave orders to pike him, and he was killed.

Did you hear any particular expression as to what place they were going to? or whether they were to attack any place?—I did. They said "Boys is it the castle we will take first?"

That was asked as a question?—Yes.

Did you see any thing about a horseman?—I did.

Where?—In the street upon the left-hand side.

What did you see?—I heard the noise of a horse, and then a shot was fired, and I saw them darting their pikes into the horse and the man.

That was in Thomas-street?—It was.

You did not know the faces of the people who turned you down Dirty-lane?—I never did.

Could you know them since?—I could not, for when I saw the blunderbuss I would not turn up my eyes for the king's dominions.

Did you hear any person's name mentioned among themselves, whom they called leader or captain?—I heard the name of Rourke mentioned.

At what place?—In Thomas-street.

At what time?—A little after the affair of the watchmen.

Was that after you came out of Dirty-lane?—Yes.

What was it you heard said?—I heard some of them say "Colonel Rourke" at one time, and "General Rourke" at another time.

When did you get away from that body?—Just after they were done with the horseman, they were hovering up and down the street.

Did any persons go away with you?—There did, four men and my comrade.

Which way did you go?—By Meath-street.

Did you come back into town that night?—No, sir.

Did Mahaffey?—No, sir.

When you saw the armed body in the town, did you see any person who seemed to be a principal among them, besides Rourke?—I did not.

Did you see any person particularly dressed?—I did, I saw a man in a red coat with a cocked hat and white feather.

Was he near Rourke?—I cannot say, as I did not know Rourke.

You went away you say with Mahaffey?—I did.

And did not return?—No.

Were you stopped any where?—Not till we got to Mountath.

How long was that after you left town?—It was on Tuesday after.

What countryman is Mahaffey?—A Queen's County or Kildare man.

What countryman are you?—Tipperary.

As you went along did the people make any inquiry about Dublin?—They asked us what was going on in Dublin, and they asked us some questions which we did not understand; but they made our hair stand an end.

Mr. Curran.—My lord, I must object to this evidence; what other people said at a distance from the place where the prisoner is alleged to have been, cannot be admissible evidence against him.

Mr. Mayne.—I should contend that the evidence is admissible for the purpose of showing a general confederacy; but I will not press it. Were you stopped at Mountath?—We were.

Were you brought before a magistrate?—We were.

Who was it?—I do not know his name.

Were you examined?—We were, we told lord Castle-Coote when we were at the gaol.

Did you tell him what you knew of this affair?—I did so far forth as I knew.

And after that you were sent to Dublin?—Yes, sir.

John Ryan cross-examined by Mr. Ponsonby.

How long did you stay in Dublin upon the night of the 23rd?—Not above a quarter of an hour.

Were you not more than a quarter of an hour in Dublin?—From the time they stopped us?

How long did you remain in Dublin?—I was about a quarter of an hour in their possession.

But how long did you remain in Dublin?—The moment we got out of their possession we got out of Dublin.

Where did you go?—Through Meath-street to the fields.

Where did you first stop?—We did not stop till we had the day-light, going from one field to another, we did not know what way we were going.

When day-light came where did it find you?—In a field near Tallagh-hill.

Were you acquainted with that country?—No.

Where did you remain all the day?—About Stoneybatter.

What! the next day?—Oh no, the next day we were going along.

Where did you rest that night?—Beyond the Curragh.

But where, for that is a wide description?—In a house where we got a lodging.

Was it on the road side or in the fields?—We came to the Curragh and then went to a farmer's house, who gave us a lodging having no money.

Where did you go to the next day?—We crossed the country till we got to Maryborough.

When did you stop next?—That evening.

Where?—I do not know the name of the place, it is within four or six miles of Maryborough.

What particular place did you intend to go to?—To Ennis, because my wife and children were there.

Were you taken up at Maryborough?—No, I think they call it Mountrath.

Who was with you at this time?—No one but Mahaffey.

Where you lay at the farmer's house, did you give an account of this matter?—I never said a word about it.

Did you give any account of it upon the second night?—No, sir, only that we were in dread of staying in Dublin; that they had broke out there.

You say it was at Mountrath you were

taken up?—I think so; it was not the place where the gaol was.

Was Mahaffey taken up?—He was.

As you travelled together, perhaps you were kept together?—We were for a while.

Were you examined by any person?—I was, by a justice of peace, as they said.

Did you carry a box when you sold your goods?—No, only handkerchiefs upon my arm; I was not able to carry a box.

What business does your wife follow?—She bakes confectionary in Ennis.

Was Mahaffey going into Ennis with you?—He was.

You were very much frightened at what had happened, and it was that deterred you to go so far?—It was, sir; for I thought I would not return to Dublin for the world.

How often were you examined?—They examined me but once.

But once, do you say?—My lord Castle-Coote examined me several times.

Did he examine you upon more than one day?—He did. He thought I knew a deal, I believe.

Pray how long have you and Mahaffey been partners in business?—Mostly, off and on, these two years.

Court.—Were you partners or comrades?—It is all equal.

Did you divide the profits?—Yes.

Mr. Ponsonby.—After you were examined by lord Castle-Coote, you were not detained long in the Queen's County?—Some few days.

How many?—I cannot tell; I was so very bad I could not eat or drink, I had the fright so much in my heart.

Where were you sent to from the Queen's County?—I was sent along here to Dublin.

When you came here, did any persons ask you questions?—There did.

Did Mahaffey come with you?—Yes, he was in the coach.

You travelled in a coach to Dublin?—Yes and there was a man to keep us from speaking to each other.

With whom did you talk after coming to Dublin?—With Mr. Kemmis. Mr. Sewe asked me, if I knew any of them; I said I did not, but one man.

Where have you been kept since?—In Kilmainham.

Who was the person who stopped you?—I cannot tell. We were stopped by three men upon the bridge, and were brought before a justice of peace.

Who was he?—I cannot say.

Who detained you?—I do not know; I suppose the justice of peace.

You were examined several times?—No, only once, and afterwards several times by lord Castle-Coote.

Did you tell him all that you have told here?—I cannot say that I told him all.

Did you tell him more upon the second time than you did upon the first?—No; I think not.

Did you upon the third time?—No; I told him all upon the first time that I could think of.

You said you were sick when this crowd of people came up to you?—No, but when I got against the wall.

Were you sworn against drinking?—I was. I took an oath against drinking, and I kept it; for if I took a second glass I would get giddy.

It was not from drink that you were vomiting?—No, indeed; I drank one glass in the middle of the day.

Mahaffey was a sober man too?—I always found him so.

He took an oath against drinking?—I never saw him take an oath of that kind.

Can you recollect the hour when you were pushed down the street?—I cannot.

Was it 8 o'clock?—It was more; it was just duskish.

Was it ten?—It was not.

What hour was it, to the best of your opinion?—Between 9 and 10, or 8 and 10, I cannot tell which; it was just as the lamps were lit.

Court.—Where did you leave your goods?—In my lodging, my comrade left them.

Juror.—Where did you lodge upon the 23rd of July?—At the widow Doyle's, in Dirty-lane.

I thought you said you lodged at the Talbotinn?—I did before that; but for three weeks before the 23rd of July I lodged at the widow Doyle's.

Here extracts from the proclamation were read. [*Vide Kearney's case, page 723.*]

Mary McClelland sworn.—Examined by the Attorney General.

Look at the prisoner at the bar?—[The witness did so.]

Do you know him?—I believe so.

Speak positively, madam; do you know him or not?—I believe him to be the man; I cannot positively say it. I cannot positively swear that I ever saw him before.

Mr. Attorney General.—You may retire, madam. My lord, we close the case on the part of the Crown.

DEFENCE.

Mr. Curran.—My Lords, and Gentlemen of the Jury:—It is my duty to assist the prisoner in making such defence as the nature of the charge against him, and the nature of the evidence which he has to oppose that charge, admit of. I have very often felt the most painful necessity of being in some degree responsible for the event of a trial of a man, upon the issue of which depends every thing which is dear to a human creature; and it has frequently been my lot to have that responsibility aggravated, by feeling myself under a necessity of pursuing a very long continuation of statement and of proof on the part of the

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Crown, by a very wide range of observation on the part of the prisoner. I have been always encouraged, however, to yield to that necessity, by being always certain, that on the part of the jury and the Court, that trespass upon their patience would be received with indulgence; and I have availed myself of that indulgence whenever the case required that I should do so. But where it is not necessary, I would wantonly abuse the indulgence I experience, by detaining you for any length of time: where it is not necessary, I ought not to trespass upon your patience, and that for two reasons: I think it would be a violation upon that indulgence, and highly reprehensible with respect to myself; it would be a breach of that courtesy and good manners which always prevail in forensic deliberations; and there is another reason: I always wish to bring the case of my client within as brief a compass as may be; because, where the defence is simple, to blend it with a variety of circumstances which do not give it weight, diminishes its effect by making it more complicated, than it would be if put to the jury in its natural shape.

I shall therefore briefly detail the circumstances of the prisoner's case, in the statement with which I shall trouble you and the Court; and the more so here, because, if in my anxiety for conciseness, I should omit any thing material to my client, the sagacity of my learned colleague, will not suffer it to escape; and most probably my omission might prove more beneficial, from the superior strength which the topic would receive from him. Therefore, gentlemen, I wave any observation upon all the collateral matter which you have heard; and I come directly to the charge which has been sworn to against my client. I say, I wave all consideration of the collateral matter, making only this observation, which will have the affirmance of the Court, because I feel it to be law, that no matter what implicit credit you may give to the testimony of all the witnesses who preceded Mahaffey and Ryan; though you suppose all the facts sworn to by those prior witnesses are true, yet unless those facts, or a participation in them, be brought home to the prisoner, satisfactorily to your consciences, they cannot affect him. It furnishes a general subject of regret, that such things should have happened: but the fact now to be tried is simply this: "Had the prisoner any concern in this atrocious and most indefensible transaction?" That he had, depends wholly upon the evidence of these two witnesses. The testimony of a witness may be impeached in two ways; either by the circumstances of inconsistency, of falsehood, of want of integrity; deduced from the examination of the witness himself; or by the direct testimony of others establishing such a profligacy of character, as renders him unworthy of any credit. It would be a sad thing indeed, if a corrupt or mistaken witness should not have one privilege left to him for the benefit

of public justice, and that is, the privilege of destroying his own credibility. Therefore it is a circumstance which must strike the understanding of the most inexperienced and simple man, that you may ascertain the incredibility of a story, by comparing one part of it with another, and the conduct of the relater with the whole of his account.

The first witness had been a private soldier—he had suffered a corporal and degrading punishment for some sort of unsoldierly conduct; he had been branded in his regiment as a knave; he is discharged, and then indeed he makes a strong struggle to save some of the regiment from the scandal of thinking badly of him. But he has fully admitted, not only, that he was guilty of unsoldierly conduct, which I do not much understand, and I suppose it must relate to some unbecoming behaviour; but his character is infinitely worse, because he has abused persons of the common and ordinary rank of life, by the most abominable imposition and imposture. If that be his character, and you have it from himself, I think he is no respectable sponsor for his own credibility. I cannot say, that the familiarity of breaking an oath of any sort, even a voluntary oath, can add to the credit of any man. I am afraid, that the habit of doing these things, weakens the solemnity of the obligation.

Gentlemen, I have just glanced at his character;—now see, what is the probability of the story which he tells. He is a pedlar, reduced to the most abject distress: by mere accident, he says, he, with an invalid partner, goes out to take an afternoon walk—no doubt for an innocent purpose. The evening promenade commenced at the time when an assemblage of people were arming themselves for the purpose of mischief.—It is very probable, that a man walking out innocently, might meet with such an accident; but it appears somewhat odd, that a man of a weakly habit, should take a walk, for the benefit of the night air, in Dirty-lane! so, however, it happened. There, he is accosted by a man, who endeavours to enlist him into the service of the country, by pointing a blunderbuss at his head. While he is yet debating the point between his loyalty and his danger, without thinking of the box he received, which probably was nothing, another person coming up, he suffers himself to be armed. That he and his comrade were there, I think extremely probable. If the account given of the prisoner be true, it would involve him in the transactions of the night; but the credit of the witness who deposes to the prisoner being present, is the principal subject of inquiry. Fifteen minutes happened to be the precise time in which pikes are flung out, the people are armed, and various murders are committed; after which Mahaffey and his partner break into the fields, and make their way to Tallagh-hill, carrying their pikes into the fields, and leaving them there. It is physically possible,

that a man might go to the corner of Dirty-lane, meet a crowd of ruffians, get armed with a pike, see two or three murders committed, and then make to the fields. However, I cannot but say, that it strikes me as a singular circumstance, that these men appear to forget the abuse which was offered to themselves, in the evidence which might be brought against them from the pikes which they threw away, and instead of coming back to the city, or applying to a justice of the peace, they sit out, and never draw breath until they were forty miles from Dublin. That is the account which Mahaffey gives, and upon that arises the question, which you will dispose of with wisdom and humanity—namely, Whether you can feel yourselves warranted in pronouncing a conviction, which will end in the extinction of the character and life of the prisoner, upon the testimony of a witness giving such an account of himself? He has corroborated that account of himself, because he has given the opinion of the noble lord who examined him. What was his account? One would imagine, it would have been short and simple:—"I was armed with a pike, and I ran away as soon as I could get loose." But it was not so. It does not appear that he gave evidence for some time, and when he did, it was in the manner of an Irish tenant paying rent—one gale is paid when another becomes due. He told part the first day he was examined. He is sent for the second day—Why? because lord Castle-Coote was not satisfied with the account which was given. Will it be said that the witness was disturbed, and not collected? What was the result in the mind of the magistrate? Does he appear to have been satisfied? On the contrary, he sends the witness and his comrade in strict custody to Dublin, accompanied by a person to prohibit any intercourse between them; and yet this is the witness upon whose testimony you are called upon to pronounce a verdict, which probably may sweep the prisoner from the face of the earth before to-morrow's sun goes down.

This leads me to state very shortly what will be added to that character which you have already heard. There is an observation which has been made a thousand times; it cannot receive strength from repetition; it is impossible to prove a negative. The witness says, the prisoner was in Thomas-street at nine o'clock—it is beyond moral possibility to disprove that fact by direct testimony—it can only be counteracted by showing some fact inconsistent with the assertion. The prisoner cannot prove that he was not there, except argumentatively: if he proves that he was in another place, and you believe the evidence he produces, you must reject all the testimony which has stated him to have been in Thomas-street at that particular time. There is a general sort of answer flung out against an *alibi* defence, as if it were always despicable—always false. That it may be

true is undeniable; and when true, it should be received with effectual attention, because it is the only possible species of defence, that can be brought forward. There is no manner of proving, that a man was not in the place alleged, but by showing that he was in another.

Gentlemen, I shall close this subject by making one observation. You have one witness swearing that the prisoner was in the city, at a time which tends to make him culpable. You will have many witnesses making the matter clear, that he was in another place, and if their testimony be true, it shows he was not in the place where the first witness would place him. You will have therefore to balance the evidence. If the most respectable man were called upon to know where he passed a particular day, it can only be ascertained by the persons with whom he casually converses, particularly if it be in the late hours of the day. In producing those persons, we appeal to your experience: if the witnesses, in proving the *alibi*, discover the blemish of partiality, they must diminish their own credit.—You see I am canvassing the matter fairly with you; I am not colouring it with the impressions of the advocate, but representing it in the same cool way in which you yourselves would. If on one side it shall be said that they are his friends and relations who prove this defence, your humanity, good sense, and justice will determine, by what other evidence this kind of exculpatory defence could be established. But when that is said upon one side, let me ask upon the other, Who is the man whom you are called upon to believe in his direct allegation against the prisoner?—He is an odious traitor! a man utterly illiterate, having no idea of the nature of an oath, consequently ignorant that a false one will consign him to eternal punishment! Will you permit him to swear away the blood of an innocent man? Will you allow a common informer, who has blasted his character, to substitute the life of another man for his own? He thought it necessary to avert from his body, if not from his soul, the consequences of his own crime, and he comes forward against a man who has it not in his power to open his lips to contradict him.

No matter what the feelings of the prisoner may have been when he heard the evidence; or with what conscious innocence he might have breathed a prayer to heaven, either that the guilt of the informer might not fall directly upon his head, or that God might forgive the wretch who deposed it: with respect to you, or the Court, the feelings of the prisoner are locked up in silence. The witness is privileged to proclaim the schemes which he has contrived for his own protection; and he thinks it more laudable to add the crime of murder by false testimony to that of treason, than become the victim of his own crime, when he had no chance to escape

but by that horrid aggravation of guilt! Consider, if any of you were placed in the situation of the prisoner, gagged and bound as he is, and saw the perjury of a witness saving his own infamous blood by the barbarous effusion of yours. Whatever might be your feelings, you could not give them utterance. Imagine, then, to yourselves the situation of the prisoner at the bar, the victim at which perjury is taking aim to bring him to the ground, and calculating the profits which are to be shared with the partner in trade and in treason! If there be any thing improbable, let my client have the benefit of it—he cannot be heard. As well might evidence be uttered from the grave, as from the prisoner's situation, in which the witness has placed him, as a preliminary grave. If you have any doubt, remember the sacred principle of the law, too frequently not heard in troubled and distempered times, that it is better that ninety-nine guilty persons should escape than that one innocent person should fall a victim to the inconsiderate credit which may be given to the voice of accusation in times like the present.

Gentlemen, let me add one circumstance more: you know what has happened, and the publicity of the events which has been given in evidence. You cannot think, that by suffering mercy to glean in the field of justice, and to steal her straw after the waste,—which you shall have charitably connived at,—there will not be still a plentiful harvest.

Gentlemen, I am not ashamed that my heart has broken my promise of being concise; because, if I have any social principle within me—if you are men like me—you will reason not very unlike me, and feel not very differently from me; at the uttermost, you can have only a strong belief, or suspicion, that the prisoner may be guilty of the crime. But if you condescend to rely upon any thing which I say, remember this, that nothing can be so dreadful as when a common informer shall be allowed to put a substitute in his place to satisfy the demands of public justice. I trust you will not furnish the first precedent of cutting off the life of a fellow subject upon the uncorroborated testimony of an informer, guilty by his own confession, and stating, what cannot be contradicted by direct assertion, that the prisoner was equally guilty. Gentlemen, I shall leave that testimony to be weighed by your humanity and your justice.

Daniel Barrett sworn.—Examined by
Mr. Pownby.

Do you remember the night of the 23rd of July?—I do.

Do you remember the evening of that day?—I do.

Were you about the hour of eight o'clock?—I was at John Rourke's, in Thomas-street, at eight o'clock or twenty minutes after.

Did you see the prisoner at the bar that evening?—I did.

Where did you see him?—Standing at the bar with his sister-in-law; not having seen him for some time back, I asked him to take a tumbler of punch, which he refused, saying he was going to the country.

How long did you stay?—As long as I drank a tumbler of punch.

Did you or he leave the house first?—He did; he said he was going to the country, and bid them a good evening.

How was he dressed?—In a dark coat and nankeen pantaloons.

Daniel Barrett cross-examined by Mr. Attorney General.

Who is John Rourke?—He is brother to the prisoner.

And keeps a public house?—Yes.

It was after eight o'clock?—Yes; for I had walked from James's-street, to borrow a horse to go next morning to the funeral of one Bryan, who was to be buried at Powerscourt.

You had not seen the prisoner for some time before?—Not for a month.

A Juror.—Did he mention what part of the country he was going to?—Not particularly, and I supposed he was going to his father's.

Mary Rourke sworn.—Examined by Mr. Curran.

Do you recollect the 23rd of July?—I do.

Do you know the prisoner?—I do.

Where do you live?—In Thomas-street.

Do you recollect the prisoner's coming to your house that day?—I do.

At what time did he come there?—About half past four; he took some eggs and butter; I saw him several times after; it rained, and I thought it was that delayed him; at a quarter after eight he bid me farewell, and said he was going to the country.

[Not cross-examined.]

Daniel Delany sworn.—Examined by Mr. Ponsonby.

Where do you live?—In Dolphin's barn.

Do you remember the night of the 23rd of July?—I do.

Do you know the prisoner?—I do.

Did you see him on the 23rd of July?—I did at Dolphin's-barn, at the door of my father's house, and I standing there.

Were you or he in the house?—I was standing at the door, leaning against the wall at the time he walked out of the house.

What part of Dolphin's-barn is your father's house in?—At the far end, near the Circular-road.

Are you a member of a yeomanry corps?—Yes, of the Rathcoole corps.

Which way did he go?—He bid me good night, and walked up to Camac-bridge.

About what hour was that?—About nine o'clock.

Are you positive as to the hour?—It could

not be more than a quarter after nine; for just before I saw him, I heard the canal bell ring.

Daniel Delany cross-examined by Mr. Solicitor General.

This was at your father's house?—It was. You were outside of the house?—Yes. The prisoner was within?—He was. Your father keeps a public house?—He does.

There were a good many people drinking there?—Not many.

It was Saturday night, and do you mean say there were none drinking?—There was some; I do not mind the house, but the field and ground.

How long was the prisoner there?—I cannot tell, he was there some time.

He was in a great hurry?—He was; he said it was late, and time to go home.

Where does he live?—I know where his father lives beyond Rathcoole.

Court.—How far beyond Rathcoole?—About a mile.

Mr. Solicitor General.—He was in a great hurry, you say, it was so late?—He was.

Did he drink any?—I cannot tell.

If a man left Thomas-street, what time would it take him to arrive at Dolphin's-barn?—A quarter of an hour.

Can you give an account why this man was so long going as from a quarter after eight to a quarter past nine?—I cannot tell.

If you were in a hurry going to Rathcoole, would you go by Dolphin's barn?—I would from my father's.

But would you from Thomas-street?—I would not.

What coloured coat had he?—He had a dark coloured coat, and nankeen pantaloons.

John Mathews sworn.—Examined by Mr. Curran.

Do you know the prisoner?—I do.

Do you remember the night of the 23rd of July?—I do.

Where do you live?—In Jobstown, five miles from Dublin.

Do you recollect to have seen the prisoner at any time that evening?—I did.

At what hour?—Between ten and eleven o'clock.

At what place?—At Jobstown.

Did he make any delay with you?—Yes, we drank half a gallon of porter and some spirits.

How long did he remain in your company?—Twenty minutes.

After he left you, in what direction did he proceed?—Towards home.

John Mathews cross-examined by Mr. Plunket.

You say, you saw the prisoner between ten and eleven o'clock?—Yes.

Was it eleven?—No, it was not.

How much did it want of it?—I cannot tell; my watch being broke, I left it in town to be repaired. My garden had been robbed some time before that; I went out to see if any persons were about it, and upon my return I saw the prisoner.

Was there any disturbance that night?—None that I saw.

All was quiet where you were?—It was.

That is, not the direct road to Rathcoole?—No.

How far from it?—Near three miles.

Is it the shortest way from Dublin?—I cannot say.

Have you been in Rathcoole?—Yes.

And in Dublin?—Yes.

Now, if you were going from Rathcoole to Dublin, is it by your own house at Jobstown you would go?—No.

Have you not heard that there were disturbances at Rathcoole?—I heard it was spoken of by an old woman, who was confuted afterwards, and made out a liar by some of the neighbours.

What was it she said?—She mentioned in the country that there were people in arms.

And some loyal neighbour confuted her, and you were satisfied there was no disturbance?—No, there was not.

They are as quiet now as they were then?—They are.

And as loyal as ever?—I believe they are all loyal.

Did you hear there were any men galloping between Thomas-street and Rathcoole that night?—Never; no men galloped by our place.

Nor no messenger sent to know the success of the business?—No.

Nor from Naas?—I cannot tell.

How far is Rathcoole from Naas?—I cannot tell, though I have been at fairs there.

Make a guess?—It is nine or ten miles from Rathcoole to Naas.

You never heard there was a disturbance in Naas that night?—No.

Rathcoole is on the road from Dublin to Naas?—It is.

You never heard that the garrison at Naas were up all that night?—I never heard a word of it till now.

You knew the prisoner well?—I have seen him very often since he was a boy, and I told him that the people were sitting up for him at home.

That was, where he lived?—It was at his father's place.

Did he live there?—He did not live there.

Did he live there on the 23rd of July?—He might, unknown to me.

Do you know him well?—I very often saw him since he was a small boy, and being a neighbour.

Was he not employed in Dublin, as clerk to a person at Bow-bridge?—I heard he was a clerk some time before that, but whether he was at that time, I cannot say.

It was nearer ten than eleven o'clock when you saw him?—It was half past ten.

Where was it you had the drink?—At an ale-house in the neighbourhood, and we left some of the drink unfinished.

Did he tell you any thing from Dublin?—No, he did not.

Was he walking or riding?—He was walking.

Had he been in the habit of going that road by night?—No, I saw him once.

By night?—No.

Did he say any thing whether he lived with his former employer?—No.

What drink had you?—Half a gallon of porter, and a pint of spirits.

How many persons were there?—There were three men in the house, and the workmen with me.

How far is Jobstown from the Naas road?—I cannot tell.

Did you not live there?—If I went across the fields, it might be a mile and a half; but the road may be three miles.

What road do you go from Dublin to your own place?—Through Dolphin's-barn, Crumlin, and Tallagh.

Court.—Do you know whether the prisoner went back to Dublin the next morning?—I cannot say; I heard no more of him till he was taken.

How far is it from your place to Tallagh?—Not a mile.

Edward Pender sworn.—Examined by Mr. Curran.

Where do you live?—In Whitestown.

Do you keep a public house?—I do.

Have you a partner?—Yes.

Do you know the prisoner?—Yes.

Did you see him on the 23rd of July?—I did.

At what time?—Between eleven and ten.

Was he in company with any one?—He was with Mathews and a man of his.

Did they drink any liquor?—They did.

How much?—Two half pints of whiskey, and a pot of porter.

How long did they remain?—Fifteen minutes.

Did you observe in what direction the prisoner had come?—I did not; the door was shut.

Did you observe in what direction he went?—Towards home.

Did he go towards Dublin, or from it?—From it.

Was that towards his father's?—It was.

Edward Pender cross-examined by Mr. Mayne.

What time of the night was this?—Between ten and eleven. It was before half past ten.

Did you look at the clock?—No, I had no clock.

Then it is by guess? was it not better than half past ten?—It was.

But it was not eleven?—No, it was not.

How can you swear that?—I do not swear; only to the best of my knowledge.

Are you sure, when you say it was not eleven?—I am not, but it was past half past ten.

Who told you that?—Nobody.

No person mentioned the hour?—No.

Do you know Mathews?—I do, he is a near neighbour of mine.

How near does he live to you?—Forty perches.

Did you drink with him?—No, I had other business to mind.

You were attending other persons?—There were no other persons there but a carpenter, myself and my partner.

What business had you to mind?—I had writing to do after the day.

What, writing on Saturday night at eleven o'clock?—It is common to sit up late.

Your place is five miles from town?—It is.

How far from Naas?—I cannot tell.

How long have you lived there?—Not long.

How long?—Three months.

And in that time you never heard how far it was to Naas?—I cannot tell.

How far are you from Rathcoole?—I cannot tell; I believe it is four miles.

How far from your house to the Naas road?—About a mile across the fields.

There was no company in your house, but those you have mentioned?—No.

Who ordered the liquor?—I cannot tell.

Who attended the house?—I believe it was I.

Why do you not know?—Because there is my partner.

Then you attended other rooms that night?—I did.

There were a good many there?—There were carmen and travellers.

How do you know what liquor the prisoner and his friends had?—I cannot exactly say.

Did they pay you?—No.

Are you paid yet?—No. They asked, how much there was to pay, and I called my partner, who told them.

Did you drink with them?—No.

Did your partner?—No.

Who drank with them?—The man who was with them.

Did they finish their liquor, or leave any of it?—I cannot tell whether they left any or not.

Some people called there from town, and some from the country?—There did.

And was there no other person there, but those you have mentioned, at the time the prisoner was there?—No other.

Did any body tell you what was going on in Dublin?—No.

Do you swear positively you never heard of it?—Not till next morning.

You did not hear of any disturbance at Rathcoole?—No.

Nor upon the Naas road?—No.

Then when you went to bed that night you had no suspicion of what was going forward?—Not the least.

When did you hear it first?—Next morning.

Did you know, whether there was any disturbance at Rathcoole that night?—No, I never heard of it.

Nor at Naas?—No.

Nor at Maynooth?—No.

You never knew there were armed men upon the road?—I never heard of it.

Not a word of it was mentioned that night?—No.

Are you well acquainted with the prisoner?—I am.

Did you see him often?—I saw him two or three times at chapel. I have a slight acquaintance with him.

When had you seen him before?—I had not seen him for half a year.

Where did you see him then?—At a chapel at Saggard.

Where did he live?—I cannot tell.

Where did you see him before that?—At chapel again.

Did you ever see him at any other place?—Yes; at the chapel of Bornabreen.

Was he ever in your house before?—Never.

Where is his father's house?—Beyond Rathcoole a mile or two.

Was the prisoner on foot that night?—He was.

Is your house on the road from Thomas-street to Rathcoole?—I cannot tell; I never went from Thomas-street to Rathcoole.

And because you did not, you cannot tell which is the direct way?—I suppose the common high road is the way.

And not by your house?—No.

Matthew Rourke sworn.—Examined by Mr. Curran.

Do you know the prisoner?—I do.

He is your brother?—He is.

Do you remember the 23rd of July?—I do.

Did you see your brother that evening?—I did.

Where did you first see him?—At my brother John Rourke's, in Thomas-street.

Do you know of his leaving the house that evening?—I do not know; I do not imagine he left it while I was there.

What time did you leave it?—About a quarter after eight.

Did you see him after that?—I did, at the road.

Did you set off together?—We did.

How far did you go together?—We went to Jobstown.

How much farther did you go?—Not more than a mile; but I do not know the country. We separated at Jobstown, and he went to a friend's house to sleep, being more fatigued than I was, and I went home to satisfy my mother, that he was in the country.

Matthew Rourke cross-examined by Mr. Attorney General.

Where did you live at that time?—With my father; I always lived with him.

What brought you to town that day?—I had two particular reasons; first, by the directions of my mother, who heard an alarm about Dublin, and that they were talking of murder and massacre there, and my mother wished me to bring my brother Felix from town; and the second reason was, that I had a venereal, and was glad of the opportunity to get some medicine.

You and your brother left town together?—Yes.

And where did you first go to?—Through Thomas-court.

You went as quick as you could?—We could not go very fast from the concourse of people.

Then, there was some stir of people before you set out?—I never observed people walking without stirring; they moved back and forward.

Did you tell your brother of the disturbance that was expected?—I remarked to him what my mother said; but said nothing more.

As you were in a hurry, you went the shortest road?—No, I believe not. We were unwilling to be insulted by drunken people upon the road.

The streets, you say, were crowded?—They were; and being so populous led me to think that the accounts I heard were true.

To what place did you proceed?—To Dolphin's-barn.

Did you stop there?—Yes, at Delany's.

You got drink there?—Yes; the night being close, and we dry.

Did Delany see you?—I cannot say; he might, or he might not.

Did any person drink with you?—No, not that I recollect; there might, or not, an acquaintance or so.

To what place did you proceed from that?—To Jobstown.

Is it the shortest way to Jobstown through Dolphin's-barn?—I cannot say; we made it our direct way. I do not know the lie of the country; but we thought it the best way: a man was liable to be insulted the other way.

You went fair and easy?—Not fair and easy, for that would be very easy, and that would not bring us home in the time we wanted.

What did you find at Jobstown?—The porter we called for.

How much?—Half a gallon, and some spirits.

What house are you speaking off?—Pender's.

Who paid the bill?—Ecod, I do not know; I drank very little.

Being dry, you drank but little?—Drank! a man might drink little, and take a great drink afterwards.

Recollect yourself; perhaps you were confused?—Not in the least confused.

You conversed about Dublin?—No; but Mathews, whom we met on the way, asked was there any disturbance in Dublin, and my brother said, none as we left it.

How far did you go?—We separated at the cross roads; he went to a friend's house, and I went home.

At what hour did you separate?—A little after 9 we left Pender's; no, not Pender's, but Delany's; then we went to Jobstown. I could not know the time we separated.

But, as near as you can guess, what time was it when you separated?—It could not be near eleven o'clock, when we separated.

You went home to relieve your mother from her anxiety; what was it for?—To satisfy them, he was not engaged in any business in Dublin, that was likely to be.

Did it not occur to you, that his appearance would satisfy them equally, if not better, than your story?—My story was as good as his appearance.

What prevented him from going?—He was fatigued.

Why, I thought you were in a worse situation for walking than he was?—Oh, I had only a clap, which did not prevent me walking.

Then you say, he tired first?—He did.

Where did he go?—I did not go there.

But what was the name of the friend's house he went to?—Joseph Grimes.

How far is that from the Cross-roads?—By God, I cannot tell.

Do not swear, sir, but make a computation of the distance?—It is not less than a mile and a half.

How far is it from the Cross-road to Rath-coole?—I do not know the situation; must I recollect? it was night, and to cross the hill by the road would be two miles.

But the short way that you went, how far would it be?—It could not be less than two miles.

So your brother was so much fatigued, that he could only walk a mile and a half to Grimes's, and was utterly unable to walk two miles to your father's house?—But sure two miles and a quarter would be more than that.

Were you ever examined by any one as to the testimony you were to give?—I was.

By whom?—By the agent.

How many persons were present?—By God, I cannot tell, because it might be done by him alone.

How many persons were present, by virtue of your oath?—I was not questioned by virtue of my oath.

Did he examine you in any way?—He did; he took my deposition.

Who were present?—I cannot tell how many.

Were there some?—There were.

Were any of the witnesses who were examined this day present at that time?—They were.

At what hour did you arrive at your father's house?—It could not be less than twelve o'clock.

How soon after did you see your brother by virtue of your oath?—I saw him the next day, and I saw him the Monday after.

Did he go to your father's house on Sunday?—He did not; but I was at prayers, and I heard from him.

By whom?—From the man of the place; my brother was so much fatigued with the walk, that he did not come out.

Was he so much fatigued that he could not walk to your father's?—He might as he chose; that rested with himself.

What clothes had he on?—He had a dark coat on, coloured waistcoat, white neckcloth, nankin pantaloons and round hat.

Look at the coat now upon him, that is a dark green?—It is a dark coat.

How soon after did he go to your father's house?—In about a week.

What was his usual place of residence before the 23rd of July?—On that day I saw him in Dublin.

In what street did he lodge?—I do not know.

Where did you see him?—I generally saw him in Thomas-street.

Where did he live?—He lived that evening at Thomas-street.

You did not know where he lived?—I did not.

Was not the purpose of your coming to town to take him away from the mischief that was expected, and yet you say you did not know where he lived?—I knew where to find him in Thomas-street, where I often met him.

Do you persevere in saying you did not know where he lived?—I do not persevere.

What business did he follow?—He was clerk to a brewer.

With whom?—Mr. Robinson.

Will you swear that he lived with Robinson at that time?—No, I will not.

So you cannot swear where he lived at that time?—He lived that evening at my brother John's.

And you never heard where he lived?—I might have heard it and not remember it.

Joseph Grimes sworn.—Examined by Mr. Curran.

Do you know the prisoner?—I do.

Where do you live?—In Saggard.

Do you remember the night of the 23rd of July?—I do.

Did you see the prisoner upon that night?—I did.

Where did you see him, and at what hour?—He called at my house between eleven and twelve at night.

Do you know where he slept that night?—I do.

How was he dressed?—In a dark coat, nankin pantaloons and boots.

Where did he sleep?—In my place the remainder of the night.

Joseph Grimes cross-examined by Mr. Townsend.

Is the prisoner an old acquaintance of yours?—I have known him twelve or fourteen years.

Do you know his father well?—I do.

How far is his place from yours?—About two miles to go the road.

Which of the places is nearer to Dublin?—Mine is.

Have you a watch?—No.

Have you a clock in the house?—No, he there was a watch.

Who had it?—I had it; a neighbour had sent me his watch to have the chain repaired, I did not leave it.

What chain do you mean, do you mean the inside chain, or the chain it is held by?—The inside chain.

Were you in town on the night of the 23rd?—No.

Were you in town that day?—No.

Were you the day before?—No.

When were you in town before the 23rd of July?—Eight or ten days.

How far from town do you live?—Seven miles.

What employment do you follow?—I have some land.

Who lent you the watch?—One Mahon.

Who is he?—He has some land.

Where was he at that time? Was he at your house?—No; he was at home at his own house.

Was the watch going at the time?—It was going that evening.

Had you got the watch repaired?—Yes.

Is there any cross-road near your house?—No.

What is the nearest cross-road?—It is a the town of Saggard.

Was your neighbour Mahon sick at that time?—No.

When did you see him?—That day.

Why not give him his watch?—He did not ask me.

You had it repaired for a fortnight, and never told him it was repaired?—I did not.

Nor give it to him?—No.

The prisoner is a great friend of yours?—Not more than any other neighbour.

How long did the prisoner remain with you?—The remainder of that night.

No longer?—No.

Where did he go to?—He told me he was engaged to his father.

His father lived two miles from you?—He did.

You went to prayers the next day?—I did.

Did you see any of the family of the Bourkes?—I did not.

Did you see any of the Bourkes the next day?—I did not.

Nor on Monday?—I did not.

When the prisoner came to your house was he fresh and well, or was he tired and ill?—He complained of being fatigued with the road and wished to stay the remainder of the night.

A Juror.—What chapel was it you went to?—The chapel of Saggard.

Elizabeth Doyle sworn.—Examined by Mr. Ponsonby.

Do you recollect the 23rd of July?—I do.

Did Mahaffey lodge in your house?—He did for a month before; on the morning of the *eruption* he said there would be fun that night, and he would work, and he put himself in an attitude to show how he would act; I said, there would be no such thing, that they had got enough of it; I said to myself he was a rebel, and only he was just out of bed I would have thought him drunk or deranged.

You would have thought him drunk?—I would have thought he was drunk, only that I saw him getting out of bed; he had something shocking in his countenance and I said he was a rebel, and I was determined he should sleep no longer there; he said, God be with you, in the evening, and left his bundle; in an hour or two after a woman came in and said there was a crowd in Dirty-lane; that they were all strangers, and that there was something in contemplation among them, that they were all country people; what matter, said I, what can it mean; and before she left the place there was a cry of an *eruption*, and the woman screeched and was alarmed, how to get to her husband and her child; and this Mahaffey I know to take his book oath against liquor; he and his comrade fell out four or five nights before this *eruption*, and being vexed with one another, I said I would get shut of them: they went to bed, having made peace, and Mahaffey in the morning took my prayer book, and I followed him to see what he was going to do, and he took an oath that he would not drink more than a pint and a glass, and the next night he came in as drunk as ever, and the next morning after, he said there would be an *eruption*, and I said with God's will it would not be, and I was determined not to let him in again; I did not expect to come here till I got the summons.

Elizabeth Doyle cross-examined by Mr. Mayne.

You were not willing to come, madam?—I did not like to have any thing to do with it.

You would not have come upon request?—I did not like to come, nor would I have come but for the summons.

When were you served with the summons?—This day early in the morning.

You would not let the witness come into your place, you say?—No, because I thought I saw murder and every thing that was bad in his countenance, and I said only he was out of bed I should think him deranged or drunk.

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You did not send any box with him?—He had no box, but goods, which belonged to his comrade, who is a quiet and honest boy.

What is his name?—John Ryan.

Was Mahaffey the only person about Thomas-street who spoke of the business that was to be that night?—He was the only person I heard speak of it.

When did you find it true?—Between 9 and 10 at night.

And you did not hear a word from any other person?—Only the woman, who said the people were collecting.

Do you think Mahaffey took you for a rebel?—I think not; he did not, for he could not.

There were other people present in the morning?—There were.

And because he told you this business, you immediately set him down for a rebel?—I did.

It was from his looks, more than from what he said, that you formed a judgment?—From both.

Who served you with the summons?—I do not know.

How came you to be sent for?—A friend of the prisoner hearing me tell this matter took *recognisance* of the words and sent for me.

How came it to be known, that your knowledge of Mahaffey related to the prisoner, or that Mahaffey knew any thing of the prisoner?—I cannot tell that.

Did any one tell you, that Mahaffey knew any thing of the prisoner?—I cannot tell.

How came you to know that any account of Mahaffey related to the prisoner?—I know nothing of that, only from my telling the matter.

But that did not appear to relate to Rourke?—I cannot say.

Did Mahaffey say he would return in the evening?—He did.

And he did return and gave you a bundle?—Not to me, but he left it there.

You did not tell him then to take it away?—No.

You know Rourke a little?—Only by sight. You have often seen him?—Never but twice.

And you live in Dirty-lane?—Yes.

Frances Murtagh sworn.—Examined by Mr. Curran.

You are the daughter of Elizabeth Doyle?—Yes.

Do you recollect the 23rd of July?—Yes, sir.

Were you on that day in your mother's house?—I was.

Do you know a man of the name of Mahaffey, a pedlar?—I do.

Do you recollect to have seen him at breakfast that day?—I do.

Do you recollect any conversation that passed?—I was in and out of the room, and heard him telling his comrade of the breaking out that was to be that evening; that there

was to be a rebellion, and he was ready and willing to behave as any rebels would, and he put himself in an attitude to show how he would work, and my mother said he was mad, and wished to have him away.

She did not say that to his face?—No.

Frances Murtagh cross-examined by
Mr. Attorney General.

You and your mother are very loyal women?—We wish to be honest.

And you would detect and punish rebels and persons concerned in rebellion?—We would.

What magistrate did you apply to in order to give information of Mahaffey?—It was on the same day.

But it was in the morning?—We thought the like never would be in Ireland.

The next morning was Sunday, you had no doubt then that what he told you was true?—I did.

What magistrate did you go to upon that day to tell this matter?—To no magistrate; I was too much disturbed in my mind, and thought every moment would be my last.

On Monday morning you were a little more collected?—I have no more to say, than I have said; I did not wish to have any thing to say to any man.

You did not think that a rebel should be hanged?—I do; I would be glad to have it quelled, because it is the ruination of Ireland.

You did not lodge any information from that time to this?—No.

Neither did your mother?—Not to my knowledge.

When were you first applied to, to give evidence on this occasion?—I cannot tell that.

How long ago?—I cannot be considerate to tell the time.

When were you first applied to?—When all the witnesses were given in we got a subpoena.

When were you first applied to, as you answer in the presence of God?—I believe it was last week, but I cannot say; it was at the same time with all the rest.

Who first applied to you?—I will tell you; I was repeating what this man had said in a room in the house, and did not think I should come on the green cloth about it, and a person told M'Cann that I said those words of Mahaffey, and I got a subpoena.

What did you know of Mahaffey and this trial?—I cannot say what to call him, he is as drunken and violent a wretch as ever I heard of; he is no better than a robber, and a perjurer.

He was your lodger?—He was; we were waiting to get him away, he mentioned the injustice of Mac Cann.

What was that?—Before the rebellion was spoken of, Mahaffey owed Keegan 11/. and he said that Mac Cann had set him for Keegan, and he said, "that dead or alive, he would be revenged of Mac Cann before a month was about."

When did you first hear of this circumstance?—The morning before the rebellion.

But when did you hear of this circumstance of Keegan's intention to arrest Mahaffey?—A fortnight before the eruption.

What sort of a lodger was Ryan?—I have nothing to say against him.

Is he an honest man?—It is hard to say for honesty.

Is he a man to be believed upon his oath?—I cannot say; I heard he swore against drink, and I cannot answer for him, or that he was a perjurer.

Which of them is the worst?—I never heard any thing more of Ryan than that, but every one said Mahaffey was a robber and a perjurer.

Did you hear worse of Mahaffey about three weeks since the rebellion than you had heard during three months before?—I did not know him three months, but I heard he sold pinchbeek rings for gold ones, and that he sold waistcoats to countrymen, and stole them again.

Are you acquainted with Rourke, the prisoner?—I never spoke seven words to him.

In what house did you speak to him?—In no house.

Where did you speak to him?—In Thomastown street.

What passed?—He asked me, how I was, and I said very well.

Was that the first interview you ever had with him?—It was.

Are you acquainted with Mac Cann?—I am a long time.

Mr. Curran.—My lords, I object to any evidence being given respecting Mac Cann; he is not upon trial.

Mr. Attorney General.—I have no objection to the witness retiring.

Cornelius Mac Kernan sworn.—Examined by
Mr. Curran.

Do you know Mahaffey, the pedlar?—I know a man of that name was in the Kildare militia.

How long ago?—Five or six years since.

Have you any doubt of his person? would you wish to see him?—I think I saw him to-day; I believe it is the same.

Did you know his general character?—I heard it pretty often.

From what you heard of it do you think he is deserving of credit upon his oath, in a court of justice?—I do not wish to say much upon the matter.

You must give an answer one way or another?—I do not think him deserving of credit upon his oath.

Cornelius Mac Kernan cross-examined by
Mr. Plunket.

What are you?—At that time I was a cotton manufacturer.

What are you now?—I am now in the public business.

Where do you live?—In Balbriggan.

How long since you left it?—At nine o'clock in the morning of this day I left it to come here, and on Thursday, Friday, and Saturday, I came also, being served with a summons.

You came willingly?—By my oath I would not have come had I not been served.

Why, you knew the prisoner?—I never seen him till this day.

When did you first mention that you knew Mahaffey to be such a villain?—During the time of his stay in Balbriggan.

But when was it that you mentioned to any body that you knew Mahaffey to be of an infamous character?—I do not recollect that I mentioned it to any body till I was subpoenaed and came here.

But you did mention it before you were served with a subpoena?—If I were to be asked five hundred times, I do not recollect whether I did or not.

And if you did not, how came you to be served with a subpoena?—I do not know, for before they asked me a question, they handed me a subpoena, not to me, but to my wife, which was equally the same.

They had got no information against Mahaffey?—Not from me, but from another, who was in the army along with him, as I heard they were inquiring about him, not before they sent the summons, because it was when they inquired any thing they sent the summons.

But if the prisoner had not been in Thomas-street on the night of the 23rd, how could he know any thing of Mahaffey?—I do not know.

On whose behalf was the summons served?—We were summoned to tell the truth of what we knew of his conduct.

But on whose behalf were you summoned?—I was summoned to tell the truth.

Where have you resided since you came to town?—I was not in a house since I came to town but where the coach stops in Bolton-street, and from that we walked.

Who was with you?—Mr. Murphy came in another coach; we then went to Mr. Newman's, and inquired about the trial's going on, and finding it was, I came here.

Where did you sleep when you were in town before?—At my sister Ryder's, in Townsend-street.

Where did you dine?—Ecod, in two or three different places.

Where first?—In Cook-street, nearly opposite the Strugglers.

Who dined with you? Nobody; I dined alone.

Who dined with you?—I cannot tell.

Who dined with you the third time?—I cannot rightly recollect. On Friday I did not dine any where.

Martin Connor sworn.—Examined by Mr. Curran.

Do you know any person of the name of Mahaffey?—I do,

Did you see him upon the table to-day?—Yes.

Did you know him?—I did for eight years; he was in the same employ with me four years.

Do you know what his general character and reputation were?—He most commonly bore not a very good character.

From the general character which you found abroad of him, do you think him deserving of credit on his oath?—No, I do not.

Martin Connor cross-examined by Mr. Townsend.

Is that the reputation of his regiment generally?—There are officers in the regiment who might give him a better character than I do; but I speak as I think; they had an opportunity to know him better than I do.

What corps do you belong to?—To the Sandymount corps.

When did you join it for the first time?—The fourth of August.

Where do you live?—In Rings-end.

They were the strongest side after the 23rd of July?—No, sir, I do not think it was.

Then you thought the rebels were the strongest?—No, you take me short, the corps is the strongest side, and always will be so.

But you did not take a fancy to join the corps?—I was applied to from my good character to join it.

How did it happen that the prisoner knew any thing of you?—I cannot tell.

When were you first applied to?—When Mahaffey came to town.

Who applied to you?—One Keegan.

Did he tell you for what?—No.

By virtue of your oath?—I have taken an oath already, and will not answer more.

By virtue of your oath, can you form a belief, on whose behalf Keegan applied to you?—He applied to me, to know what I could say of him.

On whose behalf?—On the part of the prisoners.

Which of them?—I cannot say.

Was it on behalf of all who have been tried?—No, but the three who are now trying.

Jury.—You said you did not think Mahaffey to be worthy of credit; why?—Because I saw him do things that were not proper: I was sitting in a public house in Balbriggan one evening, and he sold a waistcoat to a gentleman who was sitting there, and he afterwards stole it from him; and inquiry was made, and it was found under the seat where Mahaffey sat.

Court.—Did you see Mahaffey take it out of the man's pocket?—No, but I saw him throw it down.

Did you speak of it at the time?—No, but I saw him take it out of his own pocket, and the man of the house interfered, and that was enough for me.

Peter Keegan sworn.—Examined by Mr. Curran.

Do you know Michael Mahaffey?—I do. Have you known him long?—I have.

Do you know his character?—I do.

From your knowledge of his character, do you in your conscience believe, that his oath is deserving of credit in a court of justice?—I would not believe his oath; I saw him break his oath, and he should not be believed.

Peter Keegan cross-examined by Mr. Plunket.

Are you acquainted with the prisoner?—No.

You have no particular interest or reason to be anxious for him?—No, only I was summoned.

Without that, you would not have come?—No, sir.

Being served, you thought it your duty to come?—I came here.

You did not mention any thing of the matter until you were served with the summons?—No, there was no necessity.

Were you summoned on behalf of the prisoner, or any other persons?—No, only to tell the truth.

And you never exerted yourself to procure the attendance of a witness?—No.

Do you know Martin Connor?—I met him in Patrick-street, and he called to me to take share of some port and water, and he told me of this Mahaffey doing improper things.

Then your meeting him was mere accident?—I was there buying beef-stakes, it was mere perchance, and one Lynch was there, and it was with reluctance I went in, but he pressed me.

Where was this?—More than a fortnight, going on three weeks.

If Connor swore, that he made the declaration respecting Mahaffey in consequence of your application to him, would it be a lie?—I do not understand you.

I will put the question again; if Connor were to swear that he spoke of Mahaffey in consequence of your applying to him, would he tell a lie or not?—I do not understand you.

[The question was repeated again].—I cannot say, whether it would be a lie, or not.

[Here the case was closed on behalf of the prisoner.]

John Thornbury, produced on behalf of the crown, sworn.—Examined by Mr. Mayne.

What regiment are you in?—In the Kildare militia.

How long have you been in it?—Nine years.

What rank do you hold?—A corporal; I was originally a drummer, and was employed in the band, and was afterwards made a corporal.

Do you know Mahaffey?—I do.

How long was he in the regiment?—Four years.

How came he out of it?—He was discharged, having served four years.

Did you know his general character in the regiment?—He was a dirty man; he never kept himself as clean as any other soldier.

Had he any villanous or infamous character?

Mr. Curran.—Surely, that is not the form in which the question should be put.

Mr. Mayne.—It is directly *ad idem*; the point examined to on the part of the prisoner was whether the witness had an infamous character, to that very point I interrogate this witness; but I will put the question in another shape. What was Mahaffey's general character in the regiment?—His general character was that I knew nothing dishonest of the man, and he was considered a loyal man.

John Thornbury cross-examined by Mr. Curran.

Have you a summons in your pocket?—No, sir; I was ordered from Belfast.

That must be a mistake, when did you get the order?—On Thursday.

Did you understand what it was about?—I was applied to by my officer to know if I knew any thing of Mahaffey; he was written to.

Do you think he was written to?—I believe so, I brought a letter to Mr. Kemmis.

Do you think any gentleman said that Mahaffey would get an infamous character?—I did not hear that, but I obeyed my orders: my officer asked me, did I know any thing of him, and upon telling him what I did, he said I must attend the trial in Dublin.

And he sent you to Mr. Kemmis?—I believe so, because I was to give him a receipt for my expenses.

Did you not think it was a cruel thing to say of Mahaffey, that he was a ring-dropper?

—I heard no such thing said by the officer.

But did the men talk unkindly of him?—I never heard the men speak unkindly of him.

You never heard of the waistcoat?—Never till this day, when Mac Kernan asked me, did I remember about the waistcoat dropping from under the chair; I said I did not, I remember Mac Kernan since we lay at Bulbriggan.

You were a drummer once?—I ranked as one.

Why, one would imagine you made so much noise that you could not hear of the man's character?—I never beat a drum; I only ranked as a drummer.

Did any other person come up with you?—No.

William Bellingham Swan, esq. sworn.—Examined by Mr. Solicitor General.

Do you recollect receiving information from

lord Castle-Coote respecting the discovery of two persons in the Queen's County?—I do; he sent me the informations of Mahaffey; they were irregular, and I sent them back.

Do you recollect any thing of a man of the name of Killen?

Mr. Curran.—This evidence cannot be admitted. Major Swan cannot give parol evidence of the contents of any written informations, neither can he state any thing which was communicated to him by lord Castle-Coote.

The Counsel for the Crown yielded to the objection, and the witness retired.

Mr. Ponsonby.—My Lords, and Gentlemen of the Jury; The law of this land gives to a prisoner indicted for high treason, certain privileges, which it does not give to a man indicted for smaller offences; but the law of this land does not give him all the privileges which the legislature of Great Britain gives to persons who are indicted there. Among the privileges which are given him here, is a right to have two counsel to assist him in his defence; and as the prisoner has chosen me, as one of these, I rise to discharge the duty which I owe him upon this occasion. I rise under circumstances of peculiar difficulty, because I know an event has attended the insurrection which took place in Thomas-street, on the 23rd of July, which has made a deep impression on the mind of every man. The circumstance I allude to is, the shocking, and never enough to be lamented, murder of the deserving and unfortunate lord Kilwarden, and his nephew. That circumstance has, I fear, made so strong an impression upon the mind of every man of feeling and honour in this city, that it is next to impossible to find an impartial jury. I am sure, from your characters, that you mean to be impartial; from my knowledge of the Court, I am convinced, it means to be impartial; and as far as the feelings of human nature allow, both will discharge their duty: but I fear that without knowing it yourselves, you entertain a prejudice against every man accused of this offence, and therefore I rise under peculiar difficulty, because I rise before a tribunal, which entertains a prejudice against the party upon his trial, even before they hear the evidence against him. That increases the difficulty which the advocate would have to contend with in defending his client against the charge contained in the indictment, were it unconnected with that sad transaction; and, gentlemen, I ask you now to search and examine your own hearts; have you ever heard, before you entered that box, any thing to the prejudice, or against the character of the prisoner? Has any circulating report reached your ears, and received even a momentary entertainment of belief? Search your hearts, and say, whether you are not so afflicted and wounded by the reflection upon the horrid circumstances of that night, that if you have heard insinuations out of court against the character

of the prisoner, may they not make impressions fatal to his life? Are not the circumstances of this case so extraordinary, that impressions may be made upon your mind, deep and irremovable? And does it not, therefore, become requisite and necessary, that you should exert yourselves, and fling, as it were, from your recollection every thing which you have heard upon this subject, and to know nothing of it but what has been sworn this day in your presence?

Gentlemen, the prisoner is indicted for participating in that insurrection; he is indicted for treason in his conduct upon that night; and if the evidence against him be by you believed, there is no doubt, you will find him guilty of treason:—but I must say this, that that evidence could not convict a man in England, because the law of England does require two witnesses to the proof of every overt act of treason, except in the case where the assassination of the king is in contemplation; for there the law has been changed by a late legislative provision, and one witness is sufficient; but so tender has the law been of the life of the subject; so sensible of the possibility of a witness setting up a fabricated story, from motives of interest or malice, that even that law, which provides against an attack upon the life of the sovereign, is limited to the life of the present king, and upon his demise, the old law will again prevail, and even in the meditated assassination of the king, the law will stand as it did before the statute passed. If, therefore this prisoner were indicted in England, Mahaffey never could have been produced before an English jury; because it would not be competent by his single testimony to procure the conviction of the prisoner.

Gentlemen, the first witness, in the course of his examination swore to circumstances which produced a strong effect and emotion upon myself; and if his testimony had that effect, how much stronger must it operate upon you, and the judges who preside? He swore, that when the carriage of lord Kilwarden was coming down, Rourke, the prisoner, called out—

Mr. Baron George.—Mr. Ponsonby, you have mistaken the evidence in that respect; the witness did not attribute such conduct to the prisoner.

Mr. Ponsonby.—I must be mistaken, since the Court has been pleased to interpose, and correct me; I am glad the witness did not swear to that circumstance; because the bare mention of the fact would transport any jury beyond all bounds of consideration.

[Mr. Baron George here stated from his notes the evidence of Mahaffey, as to the transaction in Thomas-street.]

Mr. Ponsonby.—Gentlemen, I do not mean to disguise or attempt to conceal any thing from you; my great object in my preliminary observations is to prevent you, if possible,

from prejudging the case, and to prevail upon you to discharge from your minds every thing you may have previously heard, and to consider this case, merely upon the evidence.—That you have an inclination to do so, I am sure; I am confident, from your character, that it is your wish, and that you will endeavour to do so; but I know full well how hard it is for men, living in the city, and hearing the transactions of that night, to discharge themselves from every impression, and to bring to the trial of accused persons, minds which shall be like blank paper, as Lord Mansfield says, paper without characters, until the evidence shall describe characters upon them.

The accusation against this man is, that he acted in Thomas-street that night; his defence is, that he did not act there, and that he could not act there, because he was not there; this defence amounts in law to what is commonly and vulgarly called an *alibi*; and I know, that men who are unacquainted with law, or the rules of evidence, are among the most forward to sneer at such a defence—to throw up their eyes—to elevate their chins—and to signify by their gestures, as they cannot by argument, that a man making such a defence acknowledges his guilt; that it is a confession of the truth of the charge brought against him.

But, gentlemen, before you give way to observations of that sort, you will consider what the nature of the evidence is; I will suppose a matter, very improbable indeed, if not impossible, that one of you stood indicted for acting in Thomas-street upon that night; and that a witness swore positively, that he saw you directing those rebels in prosecution of the treasonable purpose; how should you defend yourself? Would you say, I appeal to the king's attorney general, I appeal to every man acquainted with me, to say, whether they think it is possible I was there? I appeal to all my neighbours who are acquainted with the whole conduct of my life—would they believe such a transaction? The attorney-general would reply, “that he thought it improbable, when the accusation was made; but a witness has sworn positively and directly to your being there, and as he comes forward to give testimony in a court of justice to prove that you were there, I cannot reject this evidence; it is a duty I owe my sovereign, to put it into a course of investigation: your neighbours think as I do, but that can do you no service; when your trial comes on you may call them, and you may appeal to a long course of life, irreproachable, and meritorious; but here is direct and positive allegation of guilt sworn to by a man who is ready to prove it: that charge you must meet and repel, if you can, by evidence; but your character, your general demeanor or meritorious conduct are no answer to that positive and direct accusation.” What would be your defence? exactly the same, which the prisoner has made; and I defy the ingenuity of a lawyer to point out any other; I do not say, that it is not easy, or probable,

but I say it is impossible. I say without the power of contradiction, that the sole defence which you could set up in exculpation of yourselves would be an *alibi* defence; you would prove, that you could not be guilty, because you were not in the place in which the crime was alleged to be committed; and to give credit to that defence, you would prove, that the single witness who had sworn against you was not sufficient to outweigh the positive depositions of all those, who had proved you were not there. The law of the country, and the scope of the talents of professional men, could not point out another defence. Human ingenuity cannot furnish another; and therefore before you condemn any man, or entertain a prejudice against any man, contemplate for a moment upon this, that it is the only defence, which by possibility he can make. If there be found a man depraved enough to swear to a particular time, and to the participation of an individual in that fact, the latter can make no other defence, but that he did not participate, because it was impossible, not being in the place where it happened. When then would you have to call upon in your defence? What are the ways in which most of you pass your evenings?—in your families, among your friends, or acquaintances; a greater portion of your lives is spent in that intercourse; who then can be the witnesses to prove where any particular man was at any particular time? who, but that family and those friends and acquaintances? and if you previously condemn the defence, because the witnesses may consist of the family or friends of the accused, you are to pass a general sentence of condemnation against every man whom a profligate individual chooses to make the subject of his charge; because, I refer you to your own experience, that when such a charge is made against any man, the witnesses in his defence must, in nine cases out of ten, consist of the description I have mentioned; and therefore it is no ground of objection, that the defence consists of an *alibi*, or that the witnesses to prove it are members of the family of the accused. See how these observations apply to the evidence which has been given. One witness only has sworn to his seeing Rourke, the prisoner, in Thomas-street that night; and it is somewhat remarkable, that this poverty of evidence should attach upon a person in the alleged situation of the prisoner; because in no other case, that has come before this court, has there been such a defect of evidence; it is strange, that if the prisoner really was in Thomas-street, it was not possible for the solicitor for the crown to prove it, by a greater number of witnesses. But see what are the circumstances, which relate to Mahaffey, and the story which he has told:—he says, that he and his partner walked out casually in the evening to refresh themselves in Dirty-lane; and soon after he got out, he found himself in a crowd of persons; that the prisoner was there with a blunderbuss in his

hand, and ordered him to accept of arms, to make part of the body and to follow his instructions; and in a short time, after stating the death of the watchman and the soldier, he and his companion made their escape from the crowd, and at day-light found themselves at Tallagh-hill!

Gentlemen, I do not discover that Mr. McCright, who was forced, by this riotous mob, to take a pike, acted any part in their transactions, or found it necessary to escape from town, and fly to Tallagh-hill: if the witness were perfectly innocent, and had taken no part to expose his life to the consequence of an accusation, why not return to town, make a declaration of what happened, and prove the guilt of those who forced him into the transaction? but it appears from the testimony of Ryan, that the sense of their own guilt operated so strongly upon them that they could not return, and they proceeded on till they arrived at Mountrath. He says indeed, that it was fear prevented him from returning; but let me ask you, is it very credible? Do you think that an innocent man, who had been forced into a business of this sort against his will, from a fear of the force, which had been exercised upon him, would keep himself in motion for forty-seven miles together? that so far from reflecting upon the propriety of disclosing it, or seeking for a magistrate, a friend, or a military man, they avoid them all, and fear so operated upon their understanding, as to keep them in a state of flight till they were arrested in Mountrath? there it appears, they were examined several times; and at length they gave information before lord Castle-Coote, who acted as a magistrate, examined them upon oath, and heard what they had to say. Whether they told upon the first interview, that they were innocent men, forced to take pikes, or offered to give evidence against others, I do not know; lord Castle-Coote might have been produced, and there is no good reason for not examining him upon this occasion, because his evidence, when the character of these witnesses is attacked, would, if the facts had borne them out, be the strongest corroboration they could have; and therefore I take for granted in the course of this conversation something did appear which it might not be prudent to disclose, by the examination of his lordship. But I ask you, which is most probable, that this man, Mahaffey, was such as he described himself to be, or was not rather a participator in the guilt of this transaction, and after his retreat from Dublin, now thinks proper to save his own life, by sacrificing that of another? Can you believe that he was a perfectly unoffending man, acting only under the impression of force? for the law is not so unreasonable as to consider him guilty, if that were the case. See what was the conduct of McCright, a respectable witness, under circumstances of that kind: he had been forced to take a pike, and to march with the insur-

gents; but the moment he escaped, he came forward to give intelligence of the transaction; whereas these two witnesses fly and continue their flight, until they are stopped by an arrest. Did not that arise from a consciousness of guilt and a fear of discovery from those very women in whose company Mahaffey made the declaration which he did the evening of the 23rd of July, confident of the success of his party; and afterwards suggested this contrivance to save himself from death? Which, I say, is most probable, or conformable to general and ordinary experience? There are in the human heart and character many and great degrees and varieties of depravity; from perfect virtue to perfect vice the scale is almost incalculable, and it would perplex the nicest judgment of the greatest moralist to discriminate exactly the different moral qualities of the several witnesses, who have been produced: Ryan you see would not swear to his seeing the prisoner, or indeed seeing any body; his fears were such as almost totally to deprive him of sight; from the time of his seeing the blunderbuss, he did not lift up his head or raise his eyes: but he heard the name of Rourke among the people; so that you perceive Ryan was not disposed to go so far in his testimony, as Mahaffey; he had not probably advanced to the same extremity of guilt, therefore it was not necessary for him to go so far: I suppose there was nothing to tempt him; but allowing that what he swore was perfectly true, what is there, but his hearing the name of Rourke? might there not be many persons of that name? What degree of guilt can that attach upon the prisoner? In truth, I say it with deference to those who conducted the prosecution, it was scarcely fair to give evidence of that kind: does the declaration of Ryan, who could not see, but stating that he heard the name of Rourke, does that afford the smallest evidence of the guilt of the prisoner? It is one of the most common names in this country, there are hundreds of persons of that name in and about the city; and yet the mere circumstance of having such a name is brought forward to prove the guilt of the prisoner. Mahaffey swore positively to the person of the prisoner, though he saw him but once before, yet in this scene of darkness and immense confusion and hurry he takes upon himself to swear positively to the person of the prisoner. On behalf of the prisoner, many witnesses have been produced; the object of the first set was to establish this position, that it was not possible for him, at the time Mahaffey states the transaction, to be there. Why? because he was with his brother fifteen or twenty minutes after eight: he was in Thomas-street at the house of his brother, and the wife of that brother is produced to prove the time of his leaving the house. We examined Delany, to prove that the prisoner was at Dolphin's-barn at a quarter after nine; we examined persons to prove that at half

after ten, he was five miles from the city of Dublin: another proves, that in a very short time after he was still farther upon the road, and another witness proves where he passed the remainder of the night. A person has been produced, the prisoner's brother I admit, to prove that he went with the prisoner the whole way, until they parted at the cross-roads going to Grimes's, where the prisoner passed the night. Has any impeachment been thrown upon the character of any one of these witnesses? Some questions were asked them relative to the persons who made applications to them to give their evidence; I say it is no matter who made the application; when witnesses were produced to the character of Mahaffey, the same questions were put to them;—Who first applied to you to give evidence? I do not well know the meaning of this question, because I am unwilling to attribute to the advocate a disposition to do that, by insinuation, which he could not do directly; and therefore I am sure, insinuations of this sort have no impression. What matter who applied to the witness to give evidence? I presume the tendency of the question (but I beg pardon if I am wrong) is this, to show that all the persons who gave evidence upon this occasion have been engaged for the purpose, or were implicated in the transaction, or well-wishers of the cause. Is the life of any man or the character of any man to be affected by insinuations of this kind? If any of you, gentlemen, stood at the bar, and men as high in situation have stood at the bar of a criminal court, if any of the judges (I beg pardon for the supposition, though even judges have stood upon their trial) if any of us were brought forward upon a charge founded in falsehood, how could we be safe, if insinuations of this sort were to affect our lives? If, in the trifling matter of a civil bill, direct testimony is required to affect the property of an individual, how much more necessary is it in the case of life, that the evidence should be positive, direct, and clear, and sworn by a man proved to be a credible witness, if his credit be attacked? against these witnesses, who have been examined for the prisoner, no attack is made, but that which insinuation may furnish; not one of them has been proved to be guilty of any offence; not one is charged as a person unfit to be believed upon oath. Will you then discredit all these witnesses? and in favour of whom? in favour of a man, who is by many sworn not to be worthy of credit upon his oath—against whose character is given the testimony of the whole county Kildare regiment, except one individual; because if the fact would have supported them, the counsel for the crown would have produced the officers, and the non-commissioned officers, to depose in favour of his character; but out of the whole regiment one single man only can be produced, and he appears in consequence of a letter written by

the solicitor for the crown to the commanding officer. Why was that witness written for? because the crown solicitor, and there is no abler or more respectable man in his profession, knew that the character of Mahaffey would be attacked, and that witnesses would be produced to swear he was unworthy of credit. To resist which, he is able to produce one single witness out of the whole regiment—this furnishes negative evidence a thousand times stronger than the positive evidence adduced for the prisoner. Do you suppose, just a man, knowing this attack, capable of recurring to the advice of the crown lawyers in matters of difficulty, or delicacy, would have left untried the production of other witnesses to swear to the credibility of Mahaffey, and the fairness of his character? And after their exertion, one man only is produced. Several have deposed against him; has any one then been discredited? Has any witness been produced to show that they are not worthy of credit upon their oaths? Some of them are men who, I should conceive, were well known to those employed for the crown; because some of them are in the service of the crown, and must have taken the oath of allegiance to qualify them for the situation. Delany is a member of the Rathcoole corps, since the first rebellion; and Conner is a member of the Sandymount corps, and was many years in the Kildare militia; and therefore, if there was any ground of attack, there was ample opportunity to make it; but their characters are unsullied; and then the question occurs to you, do you think yourselves warranted in this case, to take away the life of a fellow-subject upon the testimony of a single witness, where that witness is met by the opposite testimony of so many persons, and swearing against him as you have heard this day.

I shall be told, perhaps, that Mahaffey is corroborated in many respects by McCreight, who said, there was a man in a scarlet uniform, and mentioned other circumstances, which were detailed by Mahaffey. I agree, that Mahaffey gave a corresponding account, and no man was better qualified to give that account; he being an active partisan well knew the movements of the body, and if he had not himself marched as far as Thomestreet, he would not have afterwards marched to Mountrath; and if he were not conscious that he might be attacked himself, he never would have attacked the prisoner at the bar; and therefore you may safely believe him, when he states those transactions in which he took so active a part; but unless you believe what he has sworn with respect to the actual agency and presence of the prisoner on that night, those other circumstances signify nothing. Every man who was in the crowd might have supposed that Mahaffey was guilty.—Does any one suppose that Mr. McCreight was guilty?—and yet he swore to these transactions: the guilty man could also

swear to the same transactions, while he gave a colour to his own conduct, in order to ensure his safety.

Gentlemen, you will observe, that the brother of the prisoner swore positively, he was directed by his mother to bring the prisoner from Dublin; that she did apprehend there would be a disturbance in Dublin; if she had any apprehension that her son had an inclination of mixing in that disturbance, or was likely to be suspected of it, it was wise and cautious to send for him. But unless you disbelieve this, and suppose it a fabrication, and that this account of his going home was false, and that the other witnesses, in their accounts as to the times and places of seeing him, are all guilty of perjury; unless you declare the whole of their testimony to be an absolute fabrication, you cannot find the prisoner guilty. But, gentlemen, if the guilt of the prisoner had been attempted to be proved by a man of irreproachable character, and his testimony was corroborated by foreign and extrinsic circumstances (for it is worthy of remark, there is not a single circumstance in aid of Mahaffey's evidence) then there might be less doubt upon the case; but even then, you could not be justified in finding the prisoner guilty; because you must in that case find, that all the persons who have been produced by him, have been guilty of perjury; and it will be difficult to pronounce that, where so many have been produced, and the character of no one of them has been impeached. Would it not be more natural to suppose, that in the hurry and confusion of that night, the witness might be mistaken in the person of the prisoner?—And if there were any truth in the story of the blunderbuss being put to his head, might it not have such an effect as to prevent his taking a very exact view of the person who held it?—Under such circumstances of confusion, terror and dismay, would you not rather suppose that the witness was mistaken, than that so many persons produced for the prisoner could have sworn falsely? You will observe, that one only of the witnesses is related to him, and another connected with him by marriage: the rest have no relation or affinity to him. And surely it would be going a great way to presume perjury in all these witnesses, in favour of the oath of one single person, even supposing he were a respectable one. Is it not more natural to attribute the swearing of that witness to mistake, than that of all the rest to perjury?—But when you come to weigh the character of that person, do you feel yourselves justified in finding the truth of the fact to be according to his swearing, against the testimony of all the other witnesses?

The transactions which have taken place in his country are shocking: some of the offences which accompanied them, are not only never to be lamented, but they carry a stain with them which can never be wiped away; it is indelible. But whatever may be your

resentment, compunction, regret, shame, or indignation—these feelings furnish no evidence against the prisoner at the bar. It is shocking, that such an insurrection should have taken place; it is disgraceful in the highest degree, that one of the ablest judges, and most upright men in the country, should have fallen a sacrifice to deluded men upon that occasion. But does that furnish evidence of the identity of any person who perpetrated, or assisted in those abominations? They may fill the mind with indignation, and prepare you to receive the accusation against any man!—the feeling is not peculiar to you, but is manifest in all your fellow-citizens; and therefore it becomes necessary to watch and be exact;—you are to watch your own hearts—you are to suspect your judgments, and when you find your verdict, you are to take care, that it is not indignation against the murderers of poor lord Kilwarden that finds the verdict, instead of your own deliberate judgment, weighing the evidence, and deciding upon the testimony of Mahaffey—Be sure of that—Be sure, that as you live, the recollection of the verdict, if you incline to conviction, may satisfy you every day that you reflect upon it, and in the hour of death you can say, that no man wrongly died by your verdict. Think, if you were in the prisoner's situation, how unjust it would be, to let even generous feelings weigh against your life. You are to decide according to the evidence: it is your province, in which the Court cannot interfere, and I am sure will not interfere respecting the credit of the witnesses; that is your peculiar province, and you are bound to decide according to what you believe to be the truth of the evidence.

In the dying moments of poor lord Kilwarden, when some persons supposed to be concerned in his assassination were brought into his presence, and the honest indignation of an attending magistrate proposed to lead them to instant execution. "No, no," said that noble judge, "let no man suffer but by the sentence of the law!" I knew the fortitude which he displayed, and the unexhausted mercy which he showed in the administration of the law. The sentiments which had distinguished him through life, were conspicuous in the last moments of his existence. You never can forget him; and though while I dwell upon these circumstances, your indignation may be roused against a suspected party to his fate, you must remember his dying injunction, "Let no man suffer but by the sentence of the law."

The prisoner now stands in judgment before you: be satisfied, be convinced, that you do not pass judgment against him, but upon full conviction by legal evidence. That victims there should be for such horrid outrages, I freely admit; but they should be men guilty of such horrid outrages, and not those who may be supposed to be so. Be satisfied in your consciences of the guilt of the prisoner

before you convict him. In receiving the evidence be satisfied that every doubt is removed; that the weight of the evidence is incumbent upon you, ponderously incumbent and irresistible. Discharge your duty to the prisoner, as well as to your country. Consider, that if instead of the prisoner, a man known to you stood accused by such a witness as Mahaffey, would you feel yourselves satisfied? and is the weight of the evidence such as to compel you, without any doubt, to find him guilty, although there is no evidence of general bad character adduced against him? and if you pass sentence upon him, you must be satisfied that you would pass the same sentence against any man in similar circumstances. I own, I think it impossible; for what would a verdict of condemnation say? It would be this; that upon the testimony of a single witness, to whom many men in his own regiment gave a bad character, as not worthy of credit, and of whom no man gave a good character but one solitary individual; upon the testimony of such a man, uncorroborated by any extrinsic circumstances, against the testimony of a dozen unimpeached and unimpeachable witnesses, you would convict a fellow subject!—I own, I feel it utterly impossible; I have never known an instance of the kind in the course of my practice, where a single witness, standing in doubtful circumstances, as here, and uncorroborated, was considered as outweighing the testimony of even one unimpeached and unimpeachable witness.

But in a case of life, in which if a mistake be made it never can be repaired—in which the witness for the crown stands unsupported, where he might have been by many witnesses, I feel bold in saying, it is impossible that a jury of this country could find a verdict against the accused. I speak without affectation, when I say, I am convinced that you will act with the most perfect justice upon this occasion. I submit the case of my client to you, with the most perfect reliance upon your honour, your fairness, and your impartiality. No jury could be impanelled, from whom the prisoner could receive a fairer trial. No court could preside, from which he could receive a more lenient, merciful, or legal direction to a jury. In all these circumstances he is fortunate; and I do conceive there is but one circumstance in which he is not particularly so, and that is in having selected me as his counsel. He might have found others much more able to discharge the task. But whatever is deficient in me, the sagacity and intelligence of the Court will supply. To your judgment I commit the prisoner's life. If you find him guilty, I have this satisfaction, that no other jury would acquit him; and I have this other satisfaction, that the Court is both able and willing to supply the omissions of the advocate.—Without the affectation of compliment or candour, I am content that this case has been tried before you, who can see the

strength of the prisoner's case, and the weakness of the accusation against him, better than his advocate, and accordingly will pronounce a verdict of acquittal.

REPLY.

Mr. Solicitor General.—My Lords, and Gentlemen of the Jury;—It is now my duty to reply, on the part of the Crown, to the observations which have been made by the prisoner's counsel. The case requires no apology for obtruding upon you. The importance of it is a sufficient excuse. The charge made against the prisoner, and the line of defence which has been resorted to, render the case highly important. The charge, I say, makes it important; because you are not now trying a man who was reduced to become a traitor, like those who have been tried upon the preceding days of this commission; but if the charge be true, it stands established, that the prisoner was a distinguished leader of the rebellion, and one of those by whom some of the most violent atrocities were committed. The case is doubly important from the line of defence which has been adopted. I do not recollect any defence since the year 1798, and of the parties who were concerned in the rebellion of that year, attempted like the present; and I trust, that if the evidence for the Crown shall be believed, this attempt will meet the same kind of decision which such a defence formerly met and always merits.

Gentlemen, I shall very briefly call your attention to the evidence on behalf of the Crown, and then I shall endeavour to meet the objections which have been so ably urged by his learned counsel.

With regard to any part of the case, except that which attaches directly upon the prisoner, the gentlemen concerned for him have not controverted the evidence on the part of the Crown; they have admitted that a rebellion broke out on the 23rd of July, for the purpose of overturning the government of the country, that it broke out into actual and open war, for the purpose of establishing a new form of government by force of arms.

With regard to the part which the prisoner took in that transaction, much depends upon the evidence of Mahaffey and Ryan; but, gentlemen, give me leave to controvert in strong terms that assertion, which was repeated by both the counsel for the prisoner, that the testimony of those witnesses stood uncorroborated. I trust, I shall be able to show you, that not a witness has been produced, even on behalf of the prisoner, who has not given irresistible support to the evidence for the crown. Out of his own mouth, or the mouths of his witnesses, I shall produce decisive evidence of the prisoner's guilt.

Examine, then, in the first place, the testimony of those two witnesses who were produced on behalf of the crown; they were present at the transactions of the night of the

23rd of July; that is not controverted—it is admitted:—see, then, the situation in which they stood; one of them is by nature incapable of carrying on any scheme requiring bodily force; Ryan is afflicted with a permanent infirmity, and upon any sudden alarm, he is rendered incapable of action—and therefore, gentlemen, you must be satisfied, that if Mahaffey had intended to join in rebellion, he never would have selected, as his companion in arms, a man who he knew was so debilitated by nature, as to be incapable of affording him either instruction or assistance. This circumstance sufficiently shows the utter impossibility of Mahaffey having intended to join in such a conspiracy.

It appears, that at the time the insurrection began, those two men were in the neighbourhood of Dirty-lane, in which their residence was, and which was the natural place for them to return to. Much has been said of their walking out that evening, and the manner in which they have accounted for it. I submit to you, gentlemen, whether their proceeding was not natural to men in their situation; they were on their return, proceeding directly to their home, not like the wandering of the prisoner which was afterwards proved. They are met by the mob, which issued from the depôt where the arms were collected.—Mahaffey states, that the prisoner pushed and drove him down into the lane. It is said, that it is highly improbable he should have known a man whom he only saw once before; but the prisoner was in such a situation, and so occupied, that if the witness had never seen him before, he could scarcely be mistaken. He had a full opportunity of looking at the man, supposing he had never seen him before, he saw him for fifteen minutes, during which every action performed by him was of a nature calculated to rivet on the attention of the witness, to stamp on his recollection every feature of the prisoner in such a manner that they could not readily be forgotten.

Gentlemen, I will not go through the evidence of these two witnesses farther than as it shows the atrocities which were committed by the leader of the rebellion. The progress of the insurgents was arrested on their issuing from the depôt by the barbarous act of murdering two loyal men who unfortunately fell into their hands; and while those unfortunate men were prostrate in the streets and actually writhing in the agonies of death, the prisoner encouraged the rebels to persevere in piking them, and called upon his followers, "To do their duty and to be free." Free to do what?—Free to exercise every cruelty—to commit every outrage and enormity—to subvert the government and constitution, and to introduce riot, disorder, rapine, confusion, and anarchy. The party are armed, and they proceed to Thomas-street. The prisoner is not confined to a hiding place among the mob, where he might have escaped observa-

tion, and be obscured from view, but he appears at their head—he had the command, and is assisted by one man only in a scarlet uniform, who had the audacity to say, "That the castle would be theirs." The prisoner is connected with that man, whose appearance and expressions are proved by Mr. Mac Creight, and that confirms the testimony of Mahaffey and Ryan.

Now, gentlemen, what is the next transaction?—a dragoon passes by, and the man who thought fit to fire first upon him was the prisoner; that is confirmed by Ryan, and also by Mr. Mac Creight. But I come now to the testimony of Ryan, and if ever the testimony of a witness was deserving of attention, it is the testimony of that witness. If he was desirous to rescue his own neck from the halter and put it round the neck of the prisoner, as has been represented, do you think that he would hesitate to swear positively to the prisoner? If he were so profligately corrupt, as has been alleged, why should he hesitate? But with that candour which ever accompanies truth, he states, that from the state of alarm and debility he was thrown into when the blunderbuss was presented at him, he became incapable of recognising any body. He cautiously refrains from ascertaining any individual, on account of that temporary incapacity, and such caution must strongly recommend him to your favour. You will observe, however, that though he would not swear to the person of the prisoner, yet he heard the name of Rourke mentioned several times in the course of the transactions. It is said to have been a common name, and that many persons of that name are found in the king's army; but Mahaffey brings it home to the prisoner individually, stating, that he was addressed by the countrymen as general Rourke, and by others as captain Rourke. Is not that a corroboration of Mahaffey's testimony, so strong, as to derive implicit credence from the mind of every man?

The next transaction with regard to the two witnesses, is their flight. The moment they had an opportunity, they acted as Mr. Mac Creight did. He was compelled to join the rebels—he was obliged to witness their atrocities: such was the situation also of the witnesses. But it is said, Why not return the next morning?—But let me ask, whether it was not natural for men of their rank in life, living in that part of the town, to be impressed with a notion that they could not return with safety, thinking that the party might be successful, and that they, the witnesses, could not live there again; and with that impression, they pursue their journey to a part of the kingdom where the family of one of them resided, where he had resided before, and where they could carry on the same business in which they had been engaged in the city of Dublin.

Now, gentlemen, I come to the defence which the learned counsel are instructed to

make on behalf of the prisoner. The witnesses produced on the part of the crown are called "informers, miscreants, with the rope about their necks, and with guilt in their faces, and who, to rescue themselves from death, charge innocent men, and add to the crimes already perpetrated that of murder, under colour of law."

Permit me to say, that there is no foundation for saying they are infamous men; or even that they are approvers; no accusation was made against them. And as applicable to other cases, and the general administration of the country, I must repeat, that this attempt to cry down informers, which was formerly made when the system of the United Irishmen was first instituted, ought not to be practised again. When the United Irishmen began to conspire the overthrow of the government, they bound their adherents to secrecy by the obligations of an oath, and then terrified every person from revealing the plot by the threats of assassination; and if any man had virtue enough to reveal the treason, and if these threats were not successful, his character was calumniated, and the party endeavoured to render such person incapable of prosecuting any traitor with effect, by the imputation of crimes against himself. Then this system was first introduced, and every man who gave information was represented as a fit object of assassination: if he escaped that, every attempt was made to blast his character and ruin his reputation.

Gentlemen, you all recollect many of the trials which took place in that period—that the constant line of defence was the same which has been adopted this day, and that any man who had acquired a knowledge of their schemes, and wished to defeat them, was instantly assailed by the grossest calumnies; every corner of the kingdom was ransacked to learn something of the man, and witnesses were brought forward in an accumulated mass to destroy his character.—When Reynolds* gave important information, and afterwards appeared to give evidence, all Ireland was ransacked to procure something against his character. So in the case of Armstrong†—all his college acquaintances were sought after, for the purpose of putting him down as an object of contempt and obloquy.

What has been attempted here this day?—exactly the same defence.—In the ordinary cases, which preceded this, during the commission, such defence was not attempted, but when a leader is brought forward, the whole party is set at work,—emissaries are dispatched to Balbriggan, to Ringsend, and to Sandymount, to follow the example of 1797 and 1798.—I trust the attempt will be equally defeated, and that the result of the trial will be equally important to the public.

* See the trials of Mac Cann, Byrne, and Bond, *ant.*, vol. 28.

† See the case of the Sheareses, vol. 27, p. 355.

Gentlemen, I am only observing generally, with regard to the character of informers, that they are not to be estimated in the manner which has been represented.—Crimes can only be discovered by those who know something of them, and therefore, if you reject the evidence of informers, you give impunity to crimes, and you proclaim to the guilty, that they are free from punishment.—I do not think that so much was necessary to be said in the present case—but I thought it necessary to resist this mode of defence in the first instance. The witnesses do not appear in the character of informers: no person has charged them: there is no person to give evidence against them; but the moment they were stopped, they told the whole business—that they were in Dublin on the night of the 23d of July, and saw the prisoner as a leader of the insurgents.

Much has been relied upon, that Mahaffey did not disclose to lord Castle-Coote, at once, all his knowledge of the subject.—See how natural that was for a person of his situation and disposition.—He told some of the names of those whom he saw—he described others whose names he did not know—he appeared confused, and lord Castle-Coote gave him time; he deliberated in the interval which was allowed him—the names of all whom he knew are communicated, and they are proceeded against.—Ryan made a similar acknowledgment;—and when it is objected, that they are not deserving of credit, as being concerned in the transaction, give me leave to ask, how these conspirators are to be detected?—No loyal man could appear as a witness against them, being ignorant of their schemes; but Providence led them to press into their ranks, men who were not so sincere to them as they expected—and these men have been the means of bringing the conspirators fairly before you.—Such witnesses are not to be calumniated and repudiated as altogether unworthy of credit.—You, gentlemen, I am sure, will consider their evidence, and give it such weight as it deserves.

I will now beg of you to turn your attention to the evidence which has been adduced by the prisoner against one of the witnesses for the crown, Mahaffey; perhaps I ought first to ask, how came the prisoner or his friends to know, that Mahaffey would be a witness against him?—They could know nothing from his informations;—they did not see them;—they knew nothing from Mahaffey, because he is secluded from danger, and is confined; they could know nothing from the indictment, because it contains no mention of the names of the witnesses;—they could know nothing from the grand jury, for they are sworn to secrecy. How, then, could the fact be known? There was no indictment against Mahaffey, but he was taken to the castle, and there examined;—the prisoner might learn that, and from thence apprehend a discovery respecting himself. If the prisoner knew nothing of him,

How could he learn, that he would be the witness against him?—In no other manner than from his own heart suggesting to him, that Mahaffey was a man who had witnessed the transactions of that night, and the atrocities committed by him, the prisoner.

The witnesses produced by the prisoner, to impeach the testimony of Mahaffey, may be ranged into three classes: First, Mrs. Doyle and her daughter.—From the first, if ever there was a story improbable upon the face of it, you must see it was the story told by them. They have told you that Mahaffey, in their presence (and they represent themselves as loyal persons) announced, on the morning of the 23rd of July, the intended insurrection, and proclaimed the active part which he would take in it—and yet, that after this, he left the house without any apprehension;—he returned in the evening, without any apprehension of discovery upon his mind. Can you believe then, that he could have made such a disclosure? But what does Ryan say?—He denies the conversation altogether. Observe the conduct of these two witnesses as to Ryan; as he had not identified the prisoner, therefore they do not attack him; they give him a good character. He says he never heard of the rebellion until it broke out; and yet Mrs. Doyle swears he was present when Mahaffey made those declarations. Her daughter, who is produced to confirm her, is not content with her account of that transaction, but she must give a character of Mahaffey; she pretends to detail his history, and describes him as a robber and a thief, with such a warmth, as betrays her anxiety to assist the prisoner, even at the expense of truth.

The second class comprehends the witnesses from Balbriggan, one of whom could not recollect where he slept, where he dined, or passed his time, during his residence in town, and yet he has pretended to detail minutely to you, transactions relative to the witness, which, according to his account, happened many years ago. The second witness, from the same quarter, alleged he saw Mahaffey commit a theft in his presence, which he now at the distance of six years, remembers with such accuracy—but which struck him as of such little consequence at the time, that he took no notice of it whatever, not even to inform the person who lost the article alleged to have been stolen!

Then comes the account of two other persons, who stand in direct contradiction to each other, but each assuming the appearance of total ignorance of the prisoner and the subject of this trial. The first of these persons was Martin Connor, who was formerly in the regiment with Mahaffey, and now appears dressed up in the regimentals of a yeoman. He candidly acknowledged that he did not know which was the strongest side in the present rebellion. He said, he did not think of Mahaffey, but that Keegan came to solicit him, to know what he should say about him.

But Keegan says, that is not true—"I met Connor," says he, "by accident, and he was talking of the man, and I told him what I knew," and therefore there is a flat contradiction between them in a material point,—they discover, that they are emissaries of the party, one of the leaders of which they are anxious to save from conviction.—This is the evidence which has been adduced to impeach the witness for the crown; and I trust you see sufficient reason to resist the attempt which has been made.

It is said, we have brought forward but one witness to support the credit of the man who has been impeached—but that person was in the regiment during the whole time Mahaffey was attached to it, and he proves that the only objection which prevailed against him in the regiment was, that he did not keep himself as clean as other soldiers did. But with regard to the charge of ring-dropping, and other pretences, which were suggested in the brief, in expectation that some wretched witness would be had to prove them, you have nothing but the idle hearsay of some witnesses, who have pressed themselves forward in the cause of the prisoner, and yet pretend they are totally ignorant upon which side they were produced—or on whose behalf they were called. What was their design in uttering such falsehoods?—To assume the appearance of disinterested witnesses—and therefore, gentlemen, if the case rested there, I might leave the decision of it to you. I feel, that it is sufficient to warrant a conviction.

But I come now to a part of the evidence which establishes the guilt against the prisoner to the satisfaction of any man who might have been most inclined to disbelieve it—that is, the evidence in support of the *alibi*—the nature of that defence has been fully explained to you by Mr. Ponsonby; and the learned counsel recommended to you to throw aside every prejudice respecting the prisoner. There is no doubt, you ought to do so, if you ever felt any; and I admit it is a fair defence, if it be founded in truth.—But look at the evidence by which it has been supported here; it is impossible to view it without discovering its fallacy.—The counsel for the prisoner put the instance of one of you being charged with an offence, and he asked how you would defend yourself, but under the shelter of your character in the first instance, and then by proving an *alibi*.—I should have been silent as to that point; but it having been introduced by the prisoner's counsel, let me ask, why he did not go into evidence of that kind? He tells you what the conduct of one of you would have been. You would produce evidence to your character. Try his client by that rule; there is not a single witness adduced to his character. The learned counsel says, there is no witness to impeach the character of the prisoner. We could not examine any witness to that effect, unless the prisoner had previously given evidence in support of

it. I do not mean to say that we would have done so; but we were not at liberty to do so, if we chose; but the subject having been introduced, I will say this, that no case required so much the evidence of character as a case of this kind.—No attempt is made to show the part which he took upon any former occasion, when he might have given proofs of his loyalty, nor has he even produced the person by whom he was employed.

In establishing the defence of an *alibi*, one would suppose, the first step would be to show where he lived, and to show the necessity of his leaving town that night.—But even his brother cannot state where he lived for a month before.—He is ignorant where he resided. Can you believe that? It is impossible; then why has he concealed it?—Because we might discover from the persons with whom he resided, the real object of his departure. His acquaintance, Barret, is first produced, to show that he was in Thomas-street till past eight o'clock. Why he came there—why he left his employment—why he was sitting in a public house in that neighbourhood, he does not pretend to say.—Every other public house there was filled with armed men, or was so in a few minutes after.—What farther evidence is given?—He is invited by an old friend to drink—but, no; such was his impetuosity to fly from the impending tumult, that he quits the company of his friend. But does he proceed down James's street, and so the straight road to Rathcoole? No—he alters his course—no person can tell why—he passes through Thomas-court, and from thence to Dolphin's-barn—there he sits, notwithstanding his haste, and drinks in a public house—not a word is mentioned of the brother being with him there. It is not possible to believe, that his brother was there, without the persons of the house perceiving him, and stating that in evidence to you. It occurred to the brother, as an after-thought, to make the defence complete, by watching the prisoner every moment, and therefore he thought it necessary to describe himself as his companion from the moment he left Thomas-street until they separated near Job's-town.

Now, gentlemen, with regard to the general outline of this defence, I am inclined to think, that every word of it may be true, making an alteration in one single fact, namely, the time. I am inclined to think, that the prisoner went through every part of the road which has been mentioned by the witnesses; stating his departure from Dublin half an hour later than the witnesses did, every thing they have deposed is consistent with the case on behalf of the prosecution. Being defeated a little after ten o'clock, he goes off to Dolphin's-barn, and by devious ways, he makes his escape, not wishing to remain in town, where he would be known. From Dolphin's-barn, he proceeds to Job's-town, and there again he sits down to drink—and you will observe, that neither Mathews,

nor the other witness say a word of the brother accompanying him. They not only let him out of view, but being asked particularly as to the company, the only other person they introduced was a carpenter, and in this respect the witnesses discover they are not telling truth, when they cannot agree with each other.

But see what the testimony of the brother is:—he comes to town to relieve the anxious fears of his mother. What was her anxiety? Was it on behalf of a loyal and well-conducted son, lest he might suffer in a conflict with rebels? No; but she apprehended he would be engaged in a rebellion against the government of the country and she wished to remove him from the scene of danger. The brother comes to town for that purpose, without knowing the residence of the prisoner, and he does not take him from Thomas-street, until the people are collected in groups. Why not remove him earlier?—Because as long as a loyal man could show his face, he could incontestably prove him to be in town. The evidence for the prisoner could therefore only remove him at a critical hour. But the prisoner, instead of hastening home, stops at every public house, and with all these intervals of rest, he is so overcome with fatigue, that he stops at a friend's house, rather than walk a few furlongs farther to his father's. Look at the man and see, whether his corporal strength was not adequate to that which might be accomplished by a delicate woman. This betrays the whole tissue of falsehood.

But it does not rest there. Look at the account of the other witnesses. He goes to the house of this man, who was not his particular friend, who says he left him on the next morning to go to his father's, and that he did not see any of his family the next day. What says the brother? That the prisoner did not come home for a week, but that he heard of him the next day from Grimes, the very man who, according to his own account, had not seen any of the family.

But, gentlemen, do not suppose from this, that I totally disbelieve Grimes. I am disposed to believe what he said. But why did the prisoner go to Grimes? His conscience told him, that he could not appear at his father's house, after such crimes as he had been guilty of, and accordingly he does not venture there for a week. Why not go there for a week? Because he *dared* not, lest a sudden search might bring him to the bar of justice. But after a week had elapsed, and seeing that no search was commenced, he thought that the darkness of the night had sheltered him from observation, then he appears at his father's.

He does not produce the persons in whose employment he had been. He deserts that business; why does he forfeit the emolument of his situation? why fly from his father's house and shelter his head in the house of a stranger? You cannot account for it, except

it was to conceal himself. Has he produced a witness to show where he was during that week? If he remained in the field, skulking in the ditches, it might not be convenient to produce witnesses:—but if he remained with any honest man, he might be a witness; and therefore I cannot hesitate to say, that this defence is a tissue of fraud and fabrication. The man who has a defence consistent with honesty and truth, is incapable of substituting perjury and subornation.—I retort the observation made by the counsel for the prisoner. They charged Mahaffey with the crime of perjury; I retort it upon the witnesses for the prisoner, and say, that he has thereby aggravated his guilt.

Gentlemen, the importance of the case requires thus much from me. I will now conclude with one or two short observations. The prisoner's counsel exhorted you to reject all impressions which might have been made upon your mind, save by the evidence. I most fervently join in that exhortation, and I know from your character, that it was unnecessary to say so much. You will confine yourselves to the evidence, which you see I have done, and I trust you will feel, that it justifies the officers of the crown in bringing his case before you. An appeal was made to your humanity in which it was urged, that his man might be permitted to escape. Is it because he is superior in guilt? Because he was conspicuous in the rebel ranks, are you to let the leader escape, who ordered pikes to be driven into the bodies of his fellow creatures?—who attacked a dragoon, wearing his majesty's uniform, and murdered him without provocation? Commit the common herd of raitors to the punishment of their crimes, says the leading counsel for the prisoner, but let the rebel general escape. Is that language to hold out to a jury? Whatever pang it may inflict upon you to condemn a fellow creature, you will feel it with less poignancy, when you see a man who led and seduced the ignorant into mischief. Do justice to your country—not by mistaken mercy to the miserable man at the bar—but by showing mercy to the people who are by the conviction of such raitors to obtain security for their lives; and trust the event of this trial will teach them, that they live under a law which protects them, under a law that is too strong to be resisted, and cannot be defeated by perjury.

Prisoner.—My lords, may I not be heard?

Court.—Proceed, sir; you may add what you think proper in your defence.

Prisoner.—To the able defence which has been made by my counsel it will not be necessary to add any thing—neither need I pronounce any panegyric upon them. But to the reply of Mr. Solicitor General, I would wish to say a few words. He asks, "How could I now state that Mahaffey was to give evidence against me, unless I was conscious of having seen him upon the night of the 23rd?"—To that, I answer, that I was confronted with

him before my trial, and thereby knew he was to be a witness against me.

As to the journey, which I took into the country—I told the reason, why I took that road—I wished to avoid the other road—James's-street was full of people, and every man saw that tumult would be the consequence. Another proof that the *alibi* was not suborned is, that I gave the same account before major Sirr, when I was examined, so that it was not an after-thought.

As to evidence of character, there were many in court who could have given me a character. And as to my employment, I was in treaty for a commission for goods, and was employed as an out-clerk, and I was out through the town in the morning procuring this commission. My brother did not know my place of abode; for I met him constantly in Thomas-street when he came to town.

But the Solicitor-general said, the witnesses who proved my being at their houses upon that night at the times they stated, did not mention my brother as being with me. They were not interrogated as to that, consequently did not mention him; and as to the distance of a mile, upon which so much observation was made, it may not be much under some circumstances; but the wetness of the evening and the lateness of the hour added to a fatiguing walk, rendered an additional mile a serious matter.

As to my brother hearing of me from Grimes—my brother did not say so; and as to my going to my father's, my brother was not at home the next day, having gone to another farm and did not know whether I called at my father's, or not.

Mr. Solicitor-general said, he believed that most part of my defence was true, and yet that the whole of it was a tissue of falsehood—which is a most extravagant assertion.

To you, my lords, and to the jury, I return my most sincere thanks; I am conscious I shall have a just verdict.

SUMMING UP.

Mr. Baron George.—Gentlemen of the Jury; The prisoner Felix Rourke, is indicted for the crime of high treason; and overt acts are stated, which are necessary for your observation, because you are to consider whether any of them be proved. The prisoner is charged with conspiring with others to raise and levy war against the king and to overthrow the government, and he is charged with actually levying war for that purpose.

I apprehend it will not be necessary to detain you by a detail of all the evidence, several of the witnesses being examined by way of inducement, to show the existence of the rebellion upon the night of the 23rd of July, which fact is not questioned. The question for you to determine, will be, whether the prisoner took any part in that rebellion; and if you find, that he did voluntarily take any part in it, you will convict him—if he did not, you will acquit him.

[The learned judge here stated the evidence from his notes, and made occasional observations.]

Gentlemen, you will consider how far Mahaffey is corroborated by Ryan; and whether you can reject the testimony of one without rejecting the testimony of both.

The evidence on behalf of the prisoner consists of two classes; the first to establish an *alibi*, and secondly to impeach the witnesses for the prosecution.

It certainly is material to observe, that although the prisoner's brother gave an account of his accompanying the prisoner, yet the other witnesses make no mention whatever of him; and you will observe how particular they all are to the hour.

The learned judge also observed, that according to the evidence of the two women, it would appear that Mahaffey knew of the rebellion, and from the language stated to have been used by him, he did not appear among the rebels by compulsion, but with the same wicked intention as the others. The jury would observe, whether if Mahaffey had such a design, he would have taken such a companion by the hand as his assistant—a man overcome with infirmity, and whom the woman acknowledged to be of an honest and good character. The jury were to consider the evidence given on the part of the crown and of the prisoner, to determine upon the credit, which was due to the witnesses, and the probability of their narratives. It was also important, that the prisoner was defended by counsel of great ability; the jury heard what was said by the advocates upon each side, and would pay due attention to the arguments which were urged. The subject being discussed at such length by the counsel rendered it the less necessary for the judge to enlarge upon it. The jury would consider how far the witnesses were supported, and whether any of them spoke deliberately false in any part; if so no credit would be attached to that witness in any respect. They would determine, whether they really and in their conscience believed, that the mother of the prisoner bearing of this expected disturbance, sent for him to keep him from harm, and whether that message was delivered, and whether he in obedience to her orders readily and shortly departed from town. They would consider the time at which it was stated he set off—at the fall of night—the circuitous route which the prisoner took, for the purpose, as represented, of complying with his mother's request, and yet it appeared, that he did not go home, though by the account given of him, he had arrived very near that place. If they believed, that the fact was really so, and that the prisoner left town before the disturbance began, they should acquit him; or if they had any reasonable doubt upon that fact, they should acquit him. But if they could not reconcile that account to their con-

sciences, they were bound by all laws human and divine, to find what their reason told them was the truth of the fact.

The jury retired for ten minutes, and returned a verdict of—Guilty.

The prisoner was remanded, and at half past nine o'clock at night, the Court adjourned.

On Friday the 9th of September, the prisoner Felix Rourke was put to the bar and asked what he had to say why judgment should not be pronounced against him.

Prisoner.—My lord, I am conscious, that I am not guilty of all the crimes imputed to me, and therefore my fortitude does not forsake me. I appeal to that God, before whose throne I must shortly appear, that I am innocent of the facts sworn to by the witness. I have not committed murder, for I have never myself shed a drop of human blood deliberately; nor have I, by advice, or concurrence, contributed in any manner to the injury of a neighbour, either in person or property. With respect to the rest, I hope I have sufficient fortitude to meet my fate.

Mr. Baron George.—Felix Rourke, you stand convicted of high treason, accompanied as treason must ever be, with many murders: four of these murders have appeared to be committed in your presence, by your command, or with your own hand, and in the quarter of an hour during which you acted, what further horrid actions of the like nature were done by you, whilst that rebellion continued to rage, though they have not appeared in evidence on your trial, are yet recorded against you in a higher court, where you are still to answer.

The evidence for the Crown disclosed your conduct in the rebellion for a very short space of time; but your defence, intended for a different purpose, has disclosed how you acted when the rebels were defeated and scattered, and when the only hope that remained to you was of effecting your escape in disguise.

In making your defence, you seem to have been under the necessity of allowing, that you were in Thomas-street, at a late hour of the evening of the 23rd of July; and what is the defence you expected the jury might credit, that you, tried in a city where you long lived, character no part of your case—received to your brother on that evening a message from your mother, desiring you immediately to go home lest you should be engaged in disturbances on that night expected in Dublin; that you, in obedience to those commands, set out in a hurry about half an hour before the rebellion broke out, dressed in a dark coloured surtout and nankin pantaloons; you set out at night-fall to walk home beyond Rathcoole nine or ten miles distant by the nearest road;—yet you do not take the direct road; but go by Dolphin's-barn, Tallagh and Job's-town, a considerable deviation—you say

several times on the way, and always declare you are going home to your father's; yet, near home, you part your brother at the cross-road—sleep in Saggard; you get home in the course of a week after; during which time you meet your father and brother at other places; your journey on that night is sworn to have begun about half past eight, and to have ended between eleven and twelve. That such movements were made by you, and at such a time, in obedience to the call of your mother, the simplicity of infants could not credit; but every thing is accounted for and reconciled to reason, when we consider these facts to have taken place two hours later on that night.

We shall find you, when rebellion was dispersed, at your brother's in Thomas-street, your whitish surtout coat changed for a darkish one, and other parts of your dress covered with nankin pantaloons; setting out for your father's, fearful of pursuit you will not venture the direct road; you shape out a course most difficult to be traced; at Job's-town, you find some of your friends or acquaintances on the look-out, though late the hour—and here it is, your first venture to stop, but will not venture to abide:—aided by porter and whiskey you proceed on your journey, and to mislead the pursuers give out, that you are going to your father's; and when you arrive at the cross-road, you turn off to Saggard and from thenceforth are lurking and wandering through the country until your accounts from Dublin gave you reason to expect that you might return in safety. In the mean time Mahaffey and Ryan the terrified spectators of your crimes, and not the accomplices in your guilt, not knowing the event of the rebellion, and flying to the most distant place they knew of from the late scene of their terror, are apprehended on suspicion, and so have become the means, through which the Almighty, who will not allow treason and murder to lie concealed, has in his justice placed you at that bar.

The sort of denial of your crime, which you have now made, will not serve you, nor can it serve to throw any discredit on the justice of the Court. You say nothing as to the rebellious insurrection of which you stand convicted, and in the sense in which you seem to use the word "murder," is the rebel interpretation of that word, and not what the Great Creator meant when he commanded, "thou shalt do no murder."

An explicit confession of your guilt can only be desired for your own sake, for to us the truth of the verdict against you is fully manifest, even by the defence you have made.

And now, Felix Rourke, though on other occasions it may be thought a fruitless thing to attempt by argument to reclaim men of vicious habits and heated minds; and although we may well despair of composing to peaceful industry, minds that have been ravaging of a kingdom, and power, and riches, to be got by murder and crimes of every hue; yet in the unfortunate situation to which you

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are now reduced, and standing on the utmost limit of this world, it may be hoped that you are come back to that reason from which you have so far and so fatally wandered.

You lived in a country, enjoying more genuine liberty than any other on earth, and in the reign of a king who, for forty-three years, has been to his people a pattern of virtue, his kingdom governed by wholesome and known laws, which impose no restraint on good actions, his government administered, and justice equally dealt around by known and visible agents accountable and responsible for their conduct; under such protection and in times most prosperous, you and your associates could not rest.

And see what an exchange you have made; against all reason, you voluntarily became the sworn slaves of an invisible provisional government, and that government the slave of a foreign usurper.

And pray who or what is that provisional government to which you are thus surrendered soul and body? Is it a single tyrant, or a many-headed monster? Is it self-created, or how is it appointed? Is it French or Irish, or of what country is it? Is it self-interested or public-spirited? If it abuses you to whom are you to complain, and of whom is the complaint to be made? You neither knew, nor cared, nor considered how those things were—one excellence it had, and that was enough—it promised to break the bands of society and let anarchy and murder loose to draw in numbers to its standard—it works on the passions of the profligate, and the fears of the timid by the most lofty boastings—and when deluded men are to be led out to their destruction—when they are to be driven as a herd of beasts to slaughter—then extravagant promises are made, to set them on impossible projects. They are told nineteen counties would join; but this is fulfilled and ends in detachments from the Kildare rebels, joined by the criminals of two Dublin parishes. What is next? You are led out to carry by assault, the magazine, the barracks, and the castle of Dublin. And how has all this ended?—You, who were to have defeated a garrison of three thousand men, horse, foot, and artillery, are routed and cut up by part of the Cork-street and Coombe guard, in all not one hundred soldiers. You who were to have triumphed over the veteran and experienced officers of a great army, and all the loyalty of a great city, are defeated by the conduct and courage of lieutenants Brady and Douglas, who put a stop to your massacres and scattered you, like chaff before the wind; and much of the guilt which was then saved by flight from the edge of the sword, appears to have been reserved for the hand of the law. Such has been the fate of this rebellion, and of all rebellions that have gone before, and will be of any that may follow.

Thus all men see, that this rebellion is great only in the magnitude of its wickedness

and folly, and in every other respect contemptible; and were it not for the horrid and lamentable murders then committed, it would be ridiculous also.

But, by God's providence, that which was designed for our disgrace, or our destruction, serves only to place us in a posture of ten-fold greater security, and the ranks of honour are now filled with those who will defend the liberties of their country against the designs of the ferocious invader.

Such is the cause in which you have sacrificed your life. Think now what ought to be your conduct for the few minutes that remain—ask your own heart, whether it will help to

reconcile you with an offended God, if you shall, by seeming to glory in your guilt, encourage others to pursue the road which has led to your ruin. The sins and the crimes of that fatal night got an early check—and though they were not the tithe of what you expected to commit, yet are they frightful! Unhappy man! though the rest of your life had been immaculate, you have great need of repentance.

The learned judge then pronounced the sentence in the usual form.

The prisoner was executed upon the following day at Rathcoole.

661. Trial of JOHN KILLEN and JOHN MAC CANN, *alias* JOHN MAC KENNA, for High Treason; before the Court holden under a Special Commission at Dublin, on Wednesday September the 7th: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.

Wednesday, 7th September, 1803.

Judges present:—Lord Norbury, Mr. Justice Finucane, Mr. Baron George, and Mr. Baron Daly.

JOHN Killen and John Mac Cann, otherwise John Mac Kenna, were put to their challenges, and the following jury was sworn, after nineteen had been set aside on the part of the crown, and thirty-one had been challenged by the prisoners.

James Murray,	John Brebner,
Henry W. White,	Jeremiah Jones,
Thomas Mac Pherson,	Thomas Franklin,
John West,	James Cuppaide,
Robert Wybrants,	Robert Fletcher,
Richard Robinson,	Thomas Harricks.

The prisoners were given in charge.

The Counsel and Agents for the Crown were the same as on the last trial.

Counsel for the Prisoners.—Mr. Curran, Mr. Mac Nally.

Agent.—Mr. Flood.

Mr. O'Grady opened the indictment which will be found in the preceding trial.

Mr. Prime Sergeant.—My Lords and Gentlemen of the Jury;—It falls to my lot, in this case to state very briefly, and in few words the circumstances which, as I am instructed, will appear in evidence against the prisoners at the bar. In so doing, I shall follow the ex-

ample which has been laudably set by the attorney-general, so much to the honour of himself, and the benign intentions of the administration, which now governs the country, by not adding to the simple narration of facts, any thing by way of aggravation, if any thing could aggravate the imputed crime, while at the same time, it is our duty nothing to extenuate.

Gentlemen, if any persons should have reason to admire the constitution, which they have endeavoured to subvert, the prisoners tried at this commission ought to admire it. Nothing has been stated against any of them in anger, nor has any indignation, which might be supposed to prevail upon such an occasion, been manifested in any respect. No attempt has been made to prejudice a jury, with regard to the guilt or innocence of any individual.

Gentlemen, the facts of the present case are very nearly connected with those of the trial of yesterday. The witnesses are the same—the indictment is the same—the period of time is the same—and a person has been convicted upon the testimony of those witnesses. But, gentlemen, it is my duty to beg of you to discharge your minds of any event, which has antecedently occurred, and to confine yourselves to balancing and estimating the evidence, which shall appear before you this day. The credit of those witnesses was sifted to the last degree; but still they are open to farther investigation, if it shall be thought necessary; because what has already happened, should not interfere with your judgment of the evidence. The persons to whom I allude, are Michael Mahaffey and John Ryan:—They had been employed in the business of hawking or peddling: they lodged in the house of a widow Doyle, in Dirty-lane, leading to The-

* From the report of William Ridgeway, esq. Barrister at Law. The preliminary proceedings will be found at the beginning of Kearney's trial, *antè*.

mas-street; they were employed in the course of the day in their usual business, and, after having dined, had gone out in the evening in quest of some money which was due to one of them; but finding it rather late they returned towards home, and met a number of people, some armed with pikes, and others with blunderbusses. Ryan was seized and pushed with violence down the lane, and Mahaffey was driven down in like manner. Ryan is an infirm man, and liable to a sickness in his stomach; the blow affected him, as might be expected, and from it, together with the alarm he was in, he was seized with a sickness, and his head became dizzy: and therefore he cannot give so precise an account, with regard to individuals, as Mahaffey. They both agree, that they were obliged to go down this lane, and to go to the repository, and were obliged to take pikes; then were forced to go up the lane to Thomas-street. The crowd increased, and being mostly armed, proceeded to acts of violence. They were headed by leaders, some of whom the witnesses can identify. They saw a trooper and a watchman killed;—but the transaction to which I particularly call your attention was, when they saw two persons lying, not quite dead; they had some remains of life, and were heard to groan.—Here the facts apply to the prisoners, who were known to one of the witnesses. Killen kept a public-house, or cellar in Thomas-street, near James's-street. He is known by a name, which one can hardly introduce to a serious trial—he was known as “the husband of the dirty cook.” The other prisoner Mac Cann kept a small ale-house at the corner of Dirty-lane. These persons were armed, and extremely active in committing deeds of violence, particularly to those two poor wretches, who were lying upon the ground. Killen thrust a pike into the body of one of those persons, and drawing it out again with deliberation, he cried out, “Now his business is done.” Mac Cann fired at the other person, who lied upon the ground in the agony of death. These are the material facts which relate to the prisoners.

I shall not detain you, gentlemen, by a relation of the acts of other individuals, who are not now before you; it would be contrary to my own disposition to attempt to inflame your minds, or to mix any other circumstances with those of the present case. And therefore, gentlemen, I shall conclude with entreating you to discharge your minds of what you have heard upon former occasions. You are to consider the charge now made against the prisoners, and their case, merely upon the facts which shall appear this day. I shall only add, that it is necessary, as has been done upon the former cases, to go into some preliminary evidence, to show, that the proceedings upon the 23rd of July, in law amount to high treason, and support the charges of compassing the death of the king, and levying war against him. These

will be previously proved, and then the witnesses will be produced to confirm the circumstances which I have stated relative to the prisoners.

Edward Wilson, esq. sworn and examined.

The witness gave the same evidence as in the first case. [*Vide Kearney's case, p. 711.*]

Donough Mac Craigh, esq. sworn and examined.

The witness gave the same evidence as on last trial.

Donough Mac Craigh, esq. cross-examined by Mr. Mac Nally.

Did this banditti put a pike into your hand?—They did.

On your making your escape, you parted with your pike?—No; I was not suffered to take it away.

But if you had been permitted, you would not consider it a matter of safety to carry it away with you?—No, certainly; I would not have carried it one inch.

Donough Mac Craigh, esq. re-examined by the Counsel for the Crown.

Mr. Mac Craigh, it may be necessary to explain what you mean by saying you were not permitted to carry away your pike?—There was one man more violent than the rest at the beginning, and was going to pike me several times. I offered him some money to befriend me: I told him the money would be of no use to him if the others took it; he then seemed inclined to assist me, but would not allow me to speak to him, and he cried out, “Damn you, don't speak to me.” When the attention of the people was drawn towards the carriage, I said to the man, “This is the time, if you have a mind to serve me.” He took hold of the pike, and I gave him what money I had in my pocket, twenty shillings in silver, and a guinea, and a guinea and a half note. He kept the pike and the money, and I got off.

Donough Mac Craigh, esq. cross-examined again.

But you would have parted with your pike, if you were let off with it?—I would have done so, as soon as I thought myself safe.

You would not walk off with your pike upon your shoulder?—I did not carry it upon my shoulder.

But suppose that no coercion was used, or pursuit, or negotiation for money, would you, upon the moment of making your escape, carry a pike through the town, or would you throw it away?—I should have considered it very unsafe to carry a pike through the town.

Counsel for the Crown.—You mention that you saw one man in scarlet; did you observe any other leaders?—I observed many who had more authority than others.

Did you observe their dress or their arms?

—There was one man who wished to have me piked, and he had a blunderbuss; I argued with him, and said that I never did him any harm.

But you say he had a blunderbuss?—He had, and there were others who had blunderbusses as well as he.

Lieutenant *Coulman* sworn and examined.

This witness gave the same account as before. [*Vide* Kearney's case, p. 719.]

Serjeant *Thomas Rice* sworn and examined.

This witness proved the proclamation as on Kearney's trial. [*Vide* p. 722.]

Michael Mahaffey sworn.—Examined by *Mr. Mayne*.

Where did you live upon the 23rd of July last?—At the widow Doyle's, in Dirty-lane.

You had a partner who lived with you?—Yes, John Ryan.

Do you recollect going out upon the evening of that day?—We went out in consequence of Ryan's being promised half-a-crown that was due to him by Mrs. Nugent, and for an old shirt and waistcoat which he had purchased. We stopped near the market-house, thinking it was too late, and were considering whether we should buy dimity or printed goods; we thought it too late, and we returned towards home.

Proceed now and state what happened?—At the top of Dirty-lane, a man of the name of Felix Rourke stopped me, and desired me to go down the lane; I turned on my heel to know what he was about, and he pulled out a blunderbuss, and cocked it, and drove us down the lane.

Was there any other person there besides Rourke?—There was a second man came to his assistance with a blunderbuss, and said he would blow our brains out if we did not go down. [The witness then stated other circumstances respecting Rourke's conduct, as in the last trial; which see.]

Look at the bar, and see if you know the prisoners?—I do know them.

What are their names?—John Killen and John Mac Cann.

Did you see them that night?—I did.

Where?—Where the two men were lying.

Court.—Had you known them before that night?—I did.

How long?—I often went into Killen's cellar to take a snack; I had no acquaintance with the other, but I knew where he lived.

Killen, you say, keeps a place of entertainment; was he known by any other name?—I described him as the person who was married to the Dirty Cook; he was her third or fourth husband.

Was he known by that description?—He was.

Where did Mac Cann live?—In Dirty-lane.

Did he keep a public-house?—He did.

Were you ever there?—I do not recollect that I ever drank there.

Did you know his name?—I knew his name was Mac Cann.

Had you been in or about Thomas-street before that time?—I was, and James's-street, for three years before.

Where did you see them upon that night?—Where I saw the two men lying, and when Rourke ordered the men to do their duty.

That was in Dirty-lane?—It was.

Were the two men dead or alive?—They were groaning upon the ground.

Did you see any thing done to them against them?—I did; I saw Killen, that big man, drive his pike into the body of one of the men.

A Juror.—Was the man lying on the ground at the time?—He was.

Mr. Mayne.—Did you see any thing done to the other man?—I saw Mac Cann, the prisoner, fire at the other man that was lying. What did he fire with?—A long pistol.

Were there at this time a great many men with pikes?—There were.

Are you sure you can say that it was Killen and Mac Cann who did as you have mentioned?—I am.

A Juror.—What time of night was this?—It was getting quite dark.

Mr. Mayne.—Were you near them?—I was.

How near?—Just at Killen's back.

A Juror.—Had Mac Cann a pike?—No.

Mr. Mayne.—You and Ryan got pikes there?—Yes.

A Juror.—How near were you to Mac Cann?—I was within about four yards of Mac Cann.

Court.—Had you seen Mac Cann's face before that night?—I did, but I did not see his face before I saw him in that place.

Mr. Mayne.—Did you see both his face and his back that night?—I did.

How was Mac Cann situated?—He was opposite to me, about four yards distant.

Did you hear any thing said?—Killen said, "that their business was done?" or "we have done their business," either one or other.

Did you see these two men when they were first attacked?—No; they were lying down when I saw them.

Did you stay long there?—Immediately after that, Rourke came up, and desired me to go down; Ryan was frightened with the shot, and screeched; and began to strain with an empty vomiting; I told him not to bawl out, or we would be murdered.

Then you went to him?—I did, and he caught me by the hand.

What happened next?—Then Rourke gave me a push, and drove me over to get a pike.

Were pikes given to you?—There was to me and my comrade, by Felix Rourke.

What was done next?—Rourke, and a man with a three cocked hat, marched at the head

of the party; he was a thin small young man. Do not mention his name. Where did you go to?—Into Thomas-street.

Did any thing particular happen, or did you see any person meet abuse, when you were in Thomas-street?—I did.

What did you see?—Before we got into Thomas-street, I saw a soldier, as I think he was, lying.

Was he alive or dead?—He seemed to be dead.

You passed him?—We did.

What next happened?—There was a watchman making a noise, and Rourke ordered the pikemen to advance and pike him.

Was it done?—It was, sir.

Was he piked to death?—He was; I saw him killed.

Did the body of people follow those persons?—They did.

Which way did the party move?—They turned towards the market-house.

What did you see next particular?—I saw them kill, I think, a soldier, a foot soldier.

A Juror.—Who killed him?—I cannot say. Was it any of the party?—It was.

Mr. Mayne.—Was that in Thomas-street?—Yes, upon the left side.

What more did you see?—I was near the corner of a street, and saw them kill another man.

Was he a soldier?—I cannot say.

Mention what you saw about a horse?—I heard a man groan.

But I ask you, did you see any thing of a horse?—I did.

Where was that?—In Thomas-street.

What was it?—I saw Felix Rourke advance to a horseman, and ask him where he was going.

Was he a soldier?—He was either a light horseman or a dragoon.

What did you see done?—Rourke asked him where he was going, and the horseman was in such a fright he could not answer him; he then fired at the horseman, and the man bent from the horse.

Who do you say fired?—Felix Rourke.

What do you mean by bent?—He was just falling when the pikemen got at him.

Did they do any thing?—They did.

What?—Both man and horse were piked.

Was the man killed?—He was.

What next happened?—We began to beat back and forward, and at last moved towards Meath-street, when my comrade and I, and four others, got off.

[The witness here gave an account of his escape and subsequent arrest, &c. as in the preceding case.]

Michael Mahaffey cross-examined by Mr. Curran.

You were concerned in this business, and armed with a pike in Thomas-street?—I was, sir.

Do you not conceive that you might be

hanged if it were proved that you were there in the manner you state, and it did not appear you were there by force?—I was forced to it.

If that did not appear, would it not expose you to the inconvenience of being hanged?—There was no one knew any thing of me till I told it myself.

Do you mean to say that you told it for the purposes of justice, and to bring murderers to light?—I wish to have murderers discovered.

Not the accomplices to be sure?—I wish to have myself cleared, as I was innocent.

Did you never think you were in any danger yourself of being convicted and hanged?

—Why, surely, I might be convicted, although I was innocent at the same time.

Did you think you might be so convicted, even though you thought yourself innocent?

—Why, of course, if any body saw me there I could not think else.

Was it for fear of that that you ran away to the Queen's County?—By virtue of my oath it was from the mob I ran away.

Why, did you think all Sunday that you were in danger of the mob?—I did; I thought myself in danger all along; because I never knew the like.

Were you afraid that every carman upon the road would kill you?—I did, because I knew nothing of the matter.

You went to bed on Sunday night, and on the next morning you set off with the same fear?—I went towards Ennis.

And with the same fear?—The fright could not leave my heart, I saw such barbarous murders committed.

You have given different accounts with regard to your acquaintance with the prisoners; you scarcely knew Mac Cann?—Yes.

Your acquaintance with him was scarcely any at all?—Yes.

How much was it?—To see him in his own house, and hear his name called, but I was not intimate with him.

Had you known more of the other?—I did.

Did you drink with him?—I have drank in his place.

He sold ale?—No, small beer; and I have eat in his place.

Now, recollect yourself before you answer; upon the oath you have taken, had you ever any quarrel whatever with Mac Cann? look at the jury.—By virtue of my oath, I had not to my knowledge.

Did you ever owe any debt to a man of the name of Keegan?—I did.

Did Keegan ever arrest you for that debt?—No, he never did.

Nor endeavour to arrest you?—Not that I heard.

Did you ever charge Mac Cann with having set you for Keegan?—No, I never did.

Did you ever, upon any occasion, strike that Keegan?—I was one night in his house, and I was drunk, and we struck each other, as we suppose.

Did Mac Cann interfere upon that occasion?—I cannot say; he might for aught I know.

Did you, upon any occasion, with respect to any conduct of Keegan or Mac Cann, declare any enmity against Mac Cann?—No, never since I was born.

Pray, sir, what kind of character had you in the Kildare militia? were you not much vilified in it?—I do not know that; there are men here who know me.

Did you not go by the name of the ring-dropper?—As to that, they might say it; I sold rings.

Were you not called the ring-dropper?—There were envious people called me so, because I would not treat them.

Do you not believe they meant to say, you sold pinch-beck rings for gold?—No, never; because it was a thing I never did.

I see it must have been false; but was not that their idea, that they meant to apply the rogue in this matter?—To be sure, people that did not know the difference.

Was it not meant to say, that you acted in an unconscionable manner, by selling one species of rings for another?—I never sold them in that way.

I do not mean to say that you did? or that a marriage with one of your rings might not be as good as any other; but they entertained a bad character of you?—No; there are some here to give a character of me.

What are their names?—There is a serjeant of the regiment here.

Did you hear that a message was sent to Belfast for some person to come up for the purpose?—I saw a corporal here.

Was he not sent for, as you believe?—I believe so.

To give you a character?—Yes.

That was because you knew you would get a bad character?—They could not give me a bad character.

You would not like it, I suppose?—They could not give me one unless they wronged me. I always did my duty as a soldier, only I was not so clean as others, but I was as loyal as any.

A Juror.—You say you saw the prisoners at the time Rourke desired the mob to do their duty?—I did.

You say that one was armed with a pike and another with a pistol?—Yes.

Are you positive that they were there at that moment?—Yes.

And acted as you say?—Yes.

John Ryan sworn.—Examined by Mr. Townsend.

This witness gave the same evidence upon his direct examination, as on the preceding trial.

John Ryan cross-examined by Mr. Mac Nally.

The man whom you have heard called

Rourke, had a white coat on?—He had a light coat.

You had a green coat?—I had this old coat. It is green?—Yes.

When you ran towards Meath-street, you had been suspected by some of the party of running away?—How suspected?

Why they thought you would leave them?—They said they would run their pike through me.

Why did they say that?—Because I said I would throw away my pike.

You said that before the whole mob?—No, but to the four men.

Where did you say that?—In Meath-street.

Did those men follow you?—No, we were in a breast together.

Were they running away?—I did not know whether they were intending to run away, or were going on.

Was it after you all separated from the main body in Thomas-street?—Yes.

When did you part from these four men?—Two of them went off and turned back to town when we got into the fields.

What hour was it when you got into the fields?—I cannot say.

It could not be more than eleven o'clock?—No, I believe not.

Did you lie down in the fields?—No, we kept walking about.

Did the other two men remain with you?—They did till dawn of day.

Why not take the opportunity of going off in the dark?—I could not, for the men.

Why you were only two against two?—Oh! one of them might kill six score of me.

Did you and Mahaffey separate?—I took him by the hand, and kept hold of him while we were in Thomas-street.

Was that after you got the pike?—Yes, and we never separated; we kept together in order to get off.

Were there guards at each street?—I did not see the streets guarded, only they had an eye to us.

You saw no guard at any place while you were in Thomas-street?—No.

But you had every opportunity of going down Meath-street?—Just after the killing of the horseman they were hovering about and we made off.

Mahaffey is your partner?—He is.

What does he deal in?—The same goods as I do.

He sometimes sells trinkets?—He might, but not since I knew him.

He sold some rings?—I heard he sold pinchbeck rings.

Did you ever hear of his pretending ring-dropping?—I never heard of it until he said he was attacked with it yesterday.

Did you lodge at Mrs. Doyle's?—Yes.

You say you saw pikes working?—I did.

Did you ever see Mahaffey working as with a pike, though without one?—Upon my oath, and by all the books in the world, I never did.

It is odd you used the same expression yesterday as Mrs. Doyle did upon that subject?—I never heard such a thing.

As you were the intimate friend of Mahaffey, do you not know that he was acquainted with Mac Cann?—I do not know whether or not.

Did you never hear that he was?—I did not; nor never saw him till I was in gaol.

Did you never hear him say any thing about Mac Cann?—I never did.

Were you present at Mrs. Doyle's when Mahaffey made a motion with his hand, and said he would work?—I was not.

Might not such a thing happen without your knowing it?—I do not know whether it might or not; I did not hear it.

A Juror.—Did you breakfast that morning at Mrs. Doyle's in company with Mahaffey?—Yes.

Mr. Mac Nally.—You were his partner?—Yes, off and on.

You lodged together?—Yes.

And slept together?—Yes.

And communicated upon your transactions in life?—We had no transactions but selling little goods.

You ran off together?—Yes.

And went to Mountrath together?—Yes.

Did you conceal yourselves?—As we had done no injury we thought to get off at both sides.

Did you find the country quiet?—I did.

Did you not conceal yourselves?—How conceal ourselves?

Keep yourselves private?—We went by ways.

What hour did you travel?—In the morning, and all hours in the day.

As you were travelling through the country did you not see the king's soldiers?—Only at Rathcoole.

Did you tell them that you were flying from Dublin, and what had happened?—I did not tell them; I ran off, not knowing what to do; I had my life, and that was enough.

You never told a word till you were taken upon suspicion?—I did not.

And then you told every thing, as you did this day?—I told so far forth as I could.

Court.—When you were taken up, did you tell every thing?—Not till I was brought to lord Castle-Coote, when I told him every thing so far forth as I knew, and I only knew one man which I told him.

Mr. Mac Nally.—You were frequently examined?—I was.

You told him a better account upon the second, than you did on the first time?—I cannot say, so far forth as I could recollect I told him.

He examined you several times?—Twice I think.

You and Mahaffey were sent up by him as persons suspected to be rebels?—I suppose we were.

A Juror.—Do you know the prisoners or

either of them?—I never saw them, till I saw them in gaol, to the best of my knowledge.

[Here extracts from the proclamation were read—*Vide* Kearney's Case, p. 723.]

[The case closed on behalf of the Crown.]

DEFENCE.

Mr. Curran.—My Lords, and Gentlemen of the Jury.—I am counsel for the two prisoners at the bar; and it is my duty to lay before the Court and you, such defence as they have; in that point of view in which it appears to me to be most available for them. I do cordially agree with the learned counsel who stated the case on behalf of the crown, that there is a mildness in the conduct of the present government, and a humanity in the mode of these prosecutions, to which I bear the testimony of my strongest approbation and fullest respect. He claims for the government, under whom he is acting in these prosecutions, the merit of temper, humanity and moderation: As a lawyer, I feel always delighted when I see that character can be claimed with justice: As a lawyer, I feel grieved in being compelled to say, that in the long retrospect of historical transactions, rare have been the times, and few the persons, who have laid themselves open to such eulogium. Cruelty is the natural compeer of guilt and of fear; it is the natural resource of criminal weakness and timidity. The wise man sees danger in its natural and true extent, and is alarmed only in proportion; the bold man feels that he can bear to be humane, and humanity is also the natural consequence of a mind highly cultivated;—on the part of the prosecutor, there should be a mildness and a softness in the pursuit of justice, while the counsel for the accused is to defend with zeal the client whose advocate he is; and whenever any example of a contrary kind has been transmitted by the faithfulness of history, we find that those departures from humanity have always been adopted by men of inferior understandings and depraved hearts. It is with pain we see in lord Coke, and with indignation in lord Verulam, to whom such talents had been allotted, too much reason to impute harshness of behaviour; at the same time I feel an anxious desire to disprove the sentence pronounced by a great poet; rather perhaps for the measure of the line, than regarding its truth as applicable to the man; when he said, "he was the meanest of mankind." And I am the less disposed to allow the judicial opinion of Pope, who, I believe, somewhere says, "That forgetfulness is one of the sciences." I should not have thought of this, if I did not find an inclination in the mind of the learned counsel to adopt that doctrine; he seemed to think, that forgetfulness is one of the sciences, for he stated as a lesson and a proof of forgetfulness a transaction, which he wished you to remember. A case, said the learned counsel, as if lecturing

upon sciences, happened yesterday, which I bring to your recollection, in order that you may forget it; so that he thinks, it must be forgotten the moment the mind is inculcated with it; and in order that your oblivion might be the more complete, he took no small pains to remind you of the fact. I allude to that case, said he, with another view—with a view of putting you, gentlemen, upon your guard, that you may take care not to forget to remember it; the fact was, that two witnesses, who were to be examined this day, had performed effectually yesterday what they were to perform again to-day. I would have you remember it, two acknowledged, confessed accomplices in the odious transactions of which they gave evidence, having no possibility of saving their own lives, except by procuring substitutes by their testimony, deposited against the prisoner, who was accordingly convicted.

But, gentlemen, it does appear to me, that the efficacy of one conviction may indeed be considered as a sufficient performance for two loyal informers; I shall venture to suggest to you, that if the conviction of the accused by the testimony of accomplices in a crime, who take refuge from the gallows by flying to the sanctuary of this table—I say, I suggest to you, whether the examples you have seen call upon you for encouragement. I know that guilt and crime may work their way to safety, and make some atonement for their offences, by describing the atrocities of others; and I would, under the indulgence of the Court, as an allusion has been made to the transaction of yesterday, beg leave to suggest, in order to remind you (if you think it right to allude to the statement of that transaction) that there was a great difference of circumstances between the case yesterday, and what has hitherto appeared, and will hereafter appear to-day. I am far from thinking that the court would wish that oral reports of what happened at former trials should be evidence for the jury; yet, however anxious they may be in that particular, when a retrospect is made that might have a criminating effect, it could not be passed by without observation.

Gentlemen, I do not mean to go into any sort of length of detail upon that subject; but since the counsel for the crown thought it prudent to introduce the topic, it is right for the counsel for the prisoner to make a stand against it; however, I will confine myself to this, that there was evidence of an *alibi* produced against my opinion; but it is the right of the prisoner, in delicate cases, to determine for himself; and counsel is only to intimate what the inclination of his judgment is, but the prisoner is to determine upon the mode of his own defence; I allude to no particular evidence, but if the case of yesterday be considered, the present will not be found to be similar to it.

Gentlemen of the jury, there is one observation that I will make, and I think it will

have the concurrence of the court:—The evidence against the prisoner is distinguishable into two departments; one is the establishment of a certain combination of occurrences highly criminal and scandalously atrocious—I mean the proof of what was done upon that unhappy night—the establishment of the fact, that there was an insurrection with a treasonable design, odious in its purposes, and despicable in its force, all that, I do not say that I can, even if my duty called for it, attempt to contradict; it is no affectation: it is clear the jury must believe it, I feel that myself believe it—but the observation I would add is this; the conviction upon the minds of all those outrages, does not give the remotest shadow of crimination against a man accused of participating in them; on the contrary, it is a call upon the mind of every honest and respectable man to question the fact, and say, whether a man, of the description of the prisoner, could be capable of acting approving, or co-operating in it;—you are called upon to adopt that humane expression of the law, which, even when the person accused is brought to the bar for trial, puts on a prayer to Heaven, that God may send him safe deliverance; you are bound to adopt that religious sentiment, and you should enter into the consideration of the testimony against him with this presumption written upon your hearts, that he is to be deemed innocent until the contrary shall be proved. I will carry the observation farther, the atrocity of every crime is apt to make such an impression upon the heart of a good and feeling man, as not to leave the judgment free to act as it would upon ordinary occasions; it is the nature of superstition to believe extraordinary allegations, by a sort of aspiring and venturesome credulity, because they are beyond the reach of ordinary apprehensions; instead of rejecting the imputation of atrocious crimes, and starting at the odiousness and turpitude of guilt, they swallow the accusation with facility of belief. I trust, gentlemen, that you will see that I am reasoning truly with you; you do not think I mean to say, that because the crime is odious, you will not believe the evidence that is called to support it; you would mistake me much, if you thought I entertained the remote possibility of imposing that upon your understandings; I mean no such thing, because if I did, it would imply that the offence would amount to nothing, when the extent of its atrocity was known, and because it was an offence odious and abominable in its nature, and most necessary to be punished, that therefore it was not necessary to punish it now; I should reason like a foolish man, and betray a total disregard of you, by supposing you could listen to such arguments; but I trust you will see that I am speaking from principles of religion and pure distributive justice, when I say, that the more atrocious a crime, the more it calls for additional deliberation in the juror, to determine whether

the charge be true or not; that is the simple question in this case, and you must see that I have simplified it; the determination of the alternative one way, leads to the inevitable destruction of my client; but it is no departure from my duty, I am taking the best ground I can for him; I must use that ground upon which the accusation places him, and on which he can be defended, and by choosing this, which was adopted in the course of the attack, mutual advantages are derived, which will ultimately give the victory to the strongest side of truth.

The evidence is reducible to narrow limits; it is the evidence of two informers—the testimony of men who see before them the certain alternative of their own death, or the conviction of some other person; I put it to the jury as a fact, coming almost expressly from the testimony of the witnesses; they fled from the city of Dublin; the first of them, whose evidence alone it is material to consider, thought (and he confessed that expressly) that the circumstances under which he had appeared and acted, might, if known, be evidence against him, and be the foundation of taking away his life.

Gentlemen of the jury, if these were violent times—if I were speaking in an angry climate—if I were speaking before such a man as Jeffries -- it would scarcely be allowed me to speak of an informer with any other language than that of reverence; it marks the political climate, when the advocate of the accused ventures what this day I venture, because the advocate should at every peril, and at all hazards, support the defence of his client; but here there is neither danger nor peril in the performance of that duty, and therefore I say it marks the times, when the advocate can speak in the presence, though under the correction of the Court, of informers, what he really thinks. A man who has been an accomplice may feel a contrition of what he has done: I am not addressing merely those who may be compelled to participate in any matter of atrocity, but those who, in the course of their lives, may be betrayed into inadvertencies of which they afterwards repent; they may come forward and make atonement, by a discovery of their guilty accomplices; God forbid that criminals of that description should not derive the advantages which may be expected from the sincerity of contrition. You, gentlemen, will feel, and the bench will feel, that I am stating this matter truly, and according to the most correct established authority; but when I say that an informer may be received in court, and give such evidence as a jury may believe, yet I say it has been the characteristic of all times, and is now established by the concurrent opinion of all judges, in determining upon the credit of an accomplice, that he must be a credible witness; and in determining upon that credit, it must strike you all as a preliminary consideration, that he who has been

guilty of so foul an offence, must possess a heart totally deprived of all social feeling, insensible of social duty, affection, or moral obligation. Show me the man who has embroiled his hands in blood; he never felt the influence of moral virtue. The crimes committed upon the occasion which has given rise to the present inquiry, are not the infirmities which spring from ordinary dispositions, but they are acts which flow from a desperate and depraved source; and the man whose heart yielded such a stream, cannot be incapable of committing another murder by his testimony. I will carry this position farther; and I will say, that a man, who for the purpose of achieving any object, could steep his hands in the blood of a fellow-creature, will not hesitate, when he speculates upon the competition, between the ruin of another and his own safety. Those men, who in sad times show the efficacy of their execution by oath, thrive only in the heat of the season; in a succeeding period, and at no long interval, those who nourished them into life, and prompted them into action, vented indignation against them, and lamented the consequences of their own conduct. See the example of Titus Oates, who was at one time looked upon as a prophet and the saviour of the country; and sorry am I to say, that he should remain upon record, an odious instance of an informer living quietly till his death, and a pensioner of the very government who were convinced of his contemptibility. I cannot admonish you by any event that is in the womb of futurity, and therefore it is, that I call upon you to take notice and warning from former times, in order to save you from the sad necessity of leaving you to a future day to look upon your own past transactions with sorrow, however well intended they might be. At the same time, I am far from entertaining a thought, that you will not discharge your duty with humanity as well as with justice.

Gentlemen, I have mentioned the character of those two witnesses; I have considered their credit; I have had occasions of estimating the general credit of informers; I heard the testimony of these men before, and I have thought of them since: it is possible, that what they say is true, but there are so many points of view in which it is possible that what they say is false, that I would not hazard a conviction upon it. You are, from your class of life, as capable as I am of saying, whether what I suggest is well or ill founded; you can determine, whether it is merely the effusion of a weak or warm mind; whether it is nothing but the interested language of a man speaking as an advocate in defence of his client—not saying what he thinks, but whatever he can upon the occasion; you will judge whether I can disdain a pitiful resource of that kind; I am not a witness for myself, it is for you to determine and to ask these questions. The counsel who speaks, cannot argue

against the man he defends—the Court would not suffer him to attempt it—he would be infamous if he did; but if any topic by which he may be defended, may occur to the counsel, the defence is not to be rejected, because it has been suggested by the advocate. We should recollect, that he is a fellow creature, and actuated by the common spirit of humanity, and when we are sworn to convict according to the evidence, the advocate is a fellow-labourer with the jury, who is a more authoritative advocate, than the advocate for the prisoner; and he should recollect, that he is addressing a Court, who are auxiliaries to the prisoner, and the jury, who are fellow-christians and fellow-subjects with him. Whatever, therefore, comes from a man labouring in the same course, should not be rejected, because it comes from a man clothed with that character. Lay then your hands upon your hearts and say—"I cannot feel that I can bring myself to convict a man, charged with so grievous a crime as high treason, upon the single uncorroborated evidence of mere common informers, concerned in the transaction by their own confession, and with nothing to excuse them, but their own declaration, that they were compelled."

Gentlemen, that I am stating this fairly to you, I hope will be acknowledged by the able and eloquent gentleman who is to follow me. I know his disposition to be too proud, and his understanding too comprehensive, to deny the truth of any abstract proposition, any principle of policy, or general example, that ought to have weight with a jury, in the discharge of their duty. I know the same would be said by the Bench, if I carried the topic farther than is consistent with the usual practice.

Gentlemen, I have very little more to trouble you with; you must all be aware, that proof of a negative is almost impossible. If any person would swear, that you were now in your own habitations, the only way in which it could be disproved, would be to show, that you were here. I understand, that both the prisoners have some evidence of that sort. If it became necessary for me to show where I had been upon a particular day, ten days or a fortnight back, it would be extremely difficult to produce a number of concurrent witnesses to the fact. I heard a witness asked, during these trials, where he had dined the day before—he told it—but upon being asked, where he had dined the day before that, he could not tell—so I could not tell where I had dined ten days ago, and therefore I should expose myself to suspicion, if I produced not a number of witnesses to the fact where I was. It is not a crowd of witnesses that will save a man;—a consistent credible witness, showing that he was not in the place where the crime was committed, by proving that he was in another, is sufficient. When the prisoners were taken, they were questioned as to their conduct upon the night of the 23rd of July; they must have heard of the abomina-

ble transactions of that night, and it was natural for them to sift their own memory, and to try and find out other persons, who were with them; that has been done. A man whose life is endangered by an accusation, cannot be idle even in a prison; he is pressing upon his friends, and soliciting inquiry. I need not tell the Court, because they know as well as I do, that counsel cannot always rest upon their instructions as to the depositions of witnesses in these cases, and therefore it is not requisite to state their evidence with an extraordinary degree of reliance upon it; and it is more candid to the Court, and the jury, rather to give them an outline, than to go into any detail.

Gentlemen, I expect that the witnesses will prove that Killen was in another place, and not in the place alleged; they will be strongly entitled to belief. As the evidence has been communicated to me, I shall feel myself much deceived, if it does not appear to be as strong evidence as the circumstances of the man could give you reason to expect. You will be confirmed in this opinion by the Court, that where evidence is extremely difficult to be had, there evidence of less cogency is received; so reputation is evidence in cases of marriage and of the birth of children. The same principle applies, when a man is called upon to show where he was at a particular time; slighter degrees of evidence are admissible.

It does not strike me, that the evidence which I have for Mac Cann, is equally strong with the evidence to be produced on behalf of Killen; but it is equally favourable. It should not appear so decisively strong, as the other, I know the candour of the learned counsel will admit, that if the evidence produced by Killen be sufficient to repel the evidence adduced against him, it equally repels it as against the other prisoner also; because if the informer be effectually contradicted in his allegation against one prisoner, it clearly follows, that he does not deserve your belief, and his evidence must fall to the ground as against the other prisoner, even though the latter should not go into any defence at all.

I think I have heard two of the judges who now preside state this principle of law, which I take to be universal, and beyond the power of contradiction; that if a witness shall depose an intentional falsehood, in any one respect, he must be rejected *in toto*, and is not intitled to the smallest degree of belief; and therefore I am warranted in saying, that though the evidence for one of the prisoners may not be so strong as the evidence for the other, yet the evidence for the Crown being shown to be unworthy of belief, it is an universal discredit, and is a shield for every man who may be attacked by the same testimony.

I feel that my heart is bearing testimony to that fair claim for humanity and moderation suggested by the counsel for the crown, be-

cause I have not addressed you, gentlemen, as I have done former juries, upon former occasions. There is no indignation of my heart to be suppressed—no effort is necessary to give force to what I say. These emotions have subsided—thank God! finally subsided—I have no passion of yours to contend with; but speaking with kindness and respect to you and to the Court, and to those whose duty has placed them on the opposite side, I feel that nothing can be done but with fair argument, unadorned by the trapping of phantastical declamation, uninfamed with idle passion; what has been said, you will judge upon and decide fairly, according to your best discretion, free from any impression but what the evidence shall make.

Gentlemen, the result comes to this: I think the credit of the accomplice and informer is very light indeed; and when his testimony is put into one scale, and the life of a fellow-creature in another, I cannot but feel, that if justice holds the balance, humanity must turn the scale—you ought to find a verdict for the accused—not because you are perfectly convinced of his innocence, because that is not necessary; but because you are not satisfied of his guilt beyond the reach or possibility of doubt. You are not called upon to say, that you believe him innocent; but that it is possible he may not be guilty—giving a negative testimony as to his guilt, not affirming his innocence. You will not give birth to an odious race of informers—you will not determine the case with the same indifference as you would a question of goods sold and delivered; but recollecting that you are standing in a great situation, with a view to public policy and constitutional law, you will say, that the evidence is weak, of evil example, of dangerous encouragement. If you have a suspicion upon your minds, you should not convict. I do not say you have; but I advise you to recollect this maxim of the law, that it is better ninety-nine guilty persons should escape, than that an innocent man should be consigned to the fate which is the event of a conviction. I pray to God to enlighten your minds and give you courage to pronounce a verdict, resisting any prejudice which may stand between you and the truth of the case, and that you will give a verdict in favour of the prisoners, if the evidence against them does not bear so irresistibly upon you, that no suggestions of justice or humanity can prevent you from dooming them to an awful and dreadful fate.

Margaret Codd sworn.—Examined by Mr. Curran.

Are you a married woman?—Yes.

Where do you live?—In Thomas-street.

Did you live there on the 23rd of July last?—Yes, sir.

Had you lived there before that time?—Yes, these eight or nine years.

Do you remember the evening of the 23rd of July?—I do perfectly.

Do you know the prisoner John Killen?—I do.

How long have you known him?—Eight or nine years.

How near do you live to him?—In the house over his cellar.

Are you a lodger in the house, or owner of the house?—A lodger.

What business does your husband follow?—None; he lives on the interest of his money.

Do you remember to have seen John Killen on the evening of the 23rd of July?—I did.

Are you positive as to that?—I am.

At what hour did you see him?—I saw him several times in the course of the day.

Did you see him on the evening of that day?—I did.

At what hour?—To the best of my recollection, I saw him at six, and afterwards in the course of the evening; it is usual, if he has not business, to come to us.

Where did you see him?—At the cellar just under the house.

You said you saw him after six o'clock?—I did.

How soon?—In the course of half an hour.

Where?—Down in the cellar, attending his lodgers at their dinner or supper.

What was the latest hour at which you saw him that evening?—I saw him between eight and nine o'clock, as I think; I went down to the cellar (I deal with him), I went down between eight and nine o'clock; I staid awhile talking to his wife; he was attending his lodgers; during the time I was there, there was a noise in the street.

Court.—How long were you there?—I suppose a quarter of an hour.

Mr. Curran.—During the time you were there, you say there was a noise in the street; can you take upon you to say what it was that was the cause of the noise?—I did not know.

Court.—Have you heard since?—Yes, my lord.

Mr. Curran.—What did you hear?—That some people were assembled in a riotous manner, called United men.

How long did you remain in the cellar, after you heard the noise?—Till seven or eight the next morning; he shut the door, and would not let us out.

Did all the people remain in the cellar as well as you?—Every creature that was there remained the whole night, except one man.

Did you go to bed in the cellar that night?—The place was so crowded with lodgers, that I was obliged to lie in the settle-bed with the maid, but did not rest the whole night.

I think you said he secured the door; did you see him?—I did, sir.

Did he remain within? or was it secured by locking it on the outside?—He remained within the whole night, and secured it by bolting it immediately.

Jury.—At what hour did he secure the door?—It was after nine o'clock.

Were you afraid to go up stairs to your own lodging?—He would not open the door, and we heard some shots, and we remained perfectly satisfied, not knowing what was the matter.

Mr. Mac Nally.—Do you say this, that in consequence of the shots you heard, you remained there the whole night for safety, and that the prisoner was there the whole night?—I solemnly protest it.

Margaret Codd cross-examined by the Solicitor General.

You and your husband lodged in the house adjoining the cellar?—No, sir; my husband lives in the country.

What family have you?—Two children.

You are a lodger in the house?—Yes.

You were often in the cellar that evening?—I was once in the evening, but several times in the day; I deal with the man, and when any thing is wanted I go for it.

You were there at six in the evening?—No, but I saw him at the door at six.

You were talking with him?—Yes.

Of what would happen?—No, I knew of no such thing.

At nine o'clock you went down to the cellar?—No, it was between eight and nine.

Then it is probable it was half past eight?—I cannot say.

What was it you went for?—A candle, I think.

To get it lighted?—No.

To purchase it?—Yes.

And you intended to return with it?—Yes.

And you left your children behind you?—No, they are in the country at nurse.

And your husband is in the country?—Yes.

What employment is he of?—No employment, he lives on the interest of his money.

Where was he that night?—He has not been in Dublin these six months.

Where does he live?—In the country, in a place called Rathdrum.

Where are the children?—With him.

And you remain in Dublin by yourself?—I do not know what you mean by that; I have never been in the country.

You remain to enjoy the pleasures of a town life?—No such thing.

How long have you been away from your husband?—He had been foolish in regard to his property, and a gentleman, who had the care of it, sunk what remained for an annuity for his life.

And then you separated?—We have not separated.

But you left the country?—No, I was not there.

Then the children were sent into the country?—They never left the nurse who reared them.

What age are they?—One is six, and the other four years old.

And they never left the house where they were nursed?—They sometimes come to town.

What business did your husband follow before this arrangement of his property?—He did not follow any; he was not fit for business.

And when he retired to the country you remained in town?—Yes.

Where?—At the house of Mr. Smith.

Adjoining to the prisoner's cellar?—Yes.

And in the mean time you now and then see your friends?—I see them and hear from them.

Does any friend live with you?—No.

When your children come to town, do they see you?—They do.

Have you any rooms for reception?—I have no rooms for reception.

What apartments have you?—I have an apartment streetwards.

That answers for all purposes, for breakfast and dinner?—I seldom dine at home.

Do you not breakfast at home?—I have no acquaintances with whom I breakfast.

Do you breakfast in this gentleman's cell?—No, sir.

You sometimes breakfast and dine in your own room however?—Yes.

And sleep there?—Yes.

You never sleep out?—No, sir.

Are you very intimate with the mistress of the cellar?—Yes.

She is called "the Dirty Cook"?—She is called so by the neighbours.

And the prisoner is distinguished as the husband of the Dirty Cook?—If it be so it is so.

Does he always live there?—Yes, he did.

You live in Smith's house?—Yes.

What part?—In the upper part.

You remained a few minutes in the cell, before you thought of returning?—Yes.

Then some noise happened?—Yes.

It is pretty clear then, you could see about you without a candle?—Yes.

You wanted the candle, I suppose to read?—I generally employ myself at work.

Did you not wait to hear what the noise was?—No, there was not much noise at that time; it was down lower in Thomas-street.

You had a suspicion of a disturbance that night?—Not the least.

You had been talking to the man from the window?—No, I was sitting at the door.

You saw nothing unusual at that time; every thing was quiet?—It was.

But when the alarm came, the cellar door was shut immediately?—It was.

Did you ever inquire what the noise was?—No.

Did any body go out?—There did, one man.

What was his name?—Knight, a pensioner; he said he was not afraid; Killen said he should not go out, were it to save his life; he did not wish to open the door, but the man insisted upon going, and he let him out; but Killen and all the rest remained.

What time did he go out?—It was not ten o'clock; I cannot be particular to the hour.

Was the firing over?—I cannot say.
After the shots the noise was very soon
over?—Yes.

It was all over by ten o'clock?—I cannot
say; the moment the noise was heard the
door was closed, and no one went out after-
wards but the pensioner.

You knew the other persons who were in
the cellar that night?—I cannot say; they
were strangers; I passed the night unplea-
santly.

Who were there?—Three pensioners in all,
Moore, Moore, and Crosby.

Moore and Crosby remained there?—They
were there that night.

Is it their usual residence?—It is of one of
them; the other was only for a short time, he
did come to town, as he told me.

When did he tell you that? was it this
year?—No.

When was it? was it before that time?—
Yes.

Court.—Was it before the 23rd?—Yes.

Mr. Solicitor General.—What is that man's
name?—Moore; I knew the man to lodge
there before, because I saw him there twice;
he did not tell me he lodged there, but I saw
him there twice.

Did you not tell me he said he lodged there?
I heard him say, that whenever he came
to town he lodged there, because he knew the
man many years.

When did he say that? was it before the
23rd?—He had no occasion to tell me, because
I knew it.

But did he tell you?—He did.

You never saw him since that night?—I
saw every day since.

Where?—In the same place; he has re-
mained there ever since.

He is an old acquaintance of yours?—He is
an old acquaintance of mine.

How came you to see him so often?—If I
was not blind I could not but see him.

You have talked to him?—I have, but not
about this business.

How came it that he told you where he
lodged?—I heard him say it to a man in the
cellar.

When was it?—I cannot say.

It was before the 23rd of July?—I cannot
say exactly.

Then you are ignorant whether it was be-
fore or after?—I cannot say.

You never thought of going up to your own
room that night?—I did very often.

How far had you to go?—To the door of the
house.

And then up stairs?—Yes.

Should you not have been very happy to
get up to your own apartment from that un-
comfortable place?—Yes, sir.

But he refused to let any person out from
apprehension?—He did.

Was the pensioner dressed in his uniform
clothes?—He was.

And could you not slip out at the time he

got out, and get in at the door?—No, I was
afraid; the firing was going on.

Then the firing was going on, and the noise
was going on, at that time?—It was.

You told me he did not go out till after 10
o'clock?—I cannot say as to the hour; there
was no watch or clock in the place.

But you said the firing was over?—I believe
so.

Then if the firing was over, and the street
quiet, why did you not go up to your own
room?—I was afraid.

And you thought you would be safe in the
cellar?—I thought I would be safe in any
place.

And therefore you remained in the cellar?
—I was afraid.

You slept with the servant maid that night?
—I did not sleep at all.

You got into the settle-bed with her?—I
did.

How many persons were there?—The three
pensioners.

And you?—Yes.

And the dirty cook and her husband?—Yes.

Court.—Were there any other people
there?—There were.

Mr. Solicitor General.—How many apart-
ments were there?—There is the front cellar
and the back one.

And no one of all the persons there was
turned out but the old pensioner?—Not one.

Jury.—Was it day-light or dark when the
cellar door was locked?—It was.

Which was it?—The candles were light.

Was it dark or was it light?—It was dark.

Was the prisoner out shortly before the
door was locked?—No, sir.

Mr. Solicitor General.—You say it was after
eight when you went down; how long were
you there before the door was shut?—Not
very long, I cannot be positive to the mo-
ment.

But the prisoner, you say, did not quit the
cellar from the time you went till next morn-
ing?—No, sir.

Prisoner.—Let her be asked if she knows
how many beds are let out for hire?—Five
beds in the inside place.

Court.—How long is it since you saw your
husband?—Six months.

Did he come to town, or did you go to him?
—He came to receive his money.

He did not come to see you, but to receive
his money?—He is paid every half year.

But if he had not the money to receive,
would he come to see you?—I do not know,
I suppose so.

Was he at your place when he received the
money?—He was.

And lodged with you?—No, sir.

I suppose you knew where he lodged when
he came to town to receive the money?—The
night he came to town he lay in Killen's
place, and remained some time till the money
was paid him; he had to wait a few days
for it.

How did it happen he did not sleep with you, your place was as convenient as Killen's?—It has happened so, that it was not the case these some years.

Jury.—Does your husband share any of the money with you?—He does.

You work a good deal?—I do.

Do you sleep in a front or a back room?—In a back room.

You saw Moore very often?—I did.

How often did it happen that you conversed with those people in the street?—I have seen them very often, and have seen Moore since this business.

How many years is it since your husband ceased to cohabit with you?—It is hard to answer these questions: it is near four years.

And how old is your youngest child?—It is near four years old.

Court.—Are your parents living?—No.

Jury.—It was not more than half past eight when the door was shut; and you say it was dark?—It was dark, it was between eight and nine; I cannot speak to the hour.

James Knight sworn.—Examined by *Mr. Curran.*

What are you?—I turn a wheel for a cutter, Mr. Read of Parliament-street.

Are you a pensioner?—I am.

You have been a soldier?—Yes.

Do you remember the 23rd of July?—I do.

Do you know the prisoner Killen?—I do.

Where did he live?—In a cellar at the corner of James's-street.

Did you see him on the evening of that day?—I saw him in his own place when I went in.

What time of the evening?—I cannot rightly tell; it was, I believe, about nine.

Was it before the disturbance?—There was no disturbance when I came in.

Jury.—Did you see any particular assemblage of people at that time?—I took no notice of any.

Mr. Curran.—What happened while you were in the cellar?—I called for my beer, and my quarter of bread and meat; and when the last bit of it was eat, this woman of the name of Codd ran down and said there was a noise in the street.

Court.—What time was that?—Half past nine.

Mr. Curran.—After she came down what happened?—Upon her saying there was a noise, the prisoner shut the door; I said, I must get out to go home; he said, it was dangerous, and I made a reply, I am an old soldier, I am not afraid to go out, therefore let me go out; he insisted upon my staying, but I would not, and he opened the door and let me out, and shut the door after me.

From the time that you went into the cellar until you left it, what was he doing?—He was sitting on the settle, near the door, as usual, with his big wife.

James Knight cross-examined by Mr. Placide.

What time do you say you went to the prisoner's?—Just about nine.

Where did you go from?—From work.

Is it in Parliament-street you work?—It is there I turn a wheel.

And you remained there till nine o'clock?—We leave off work about eight, and sometimes go and take a pot.

Did you take any that night?—I went the straight way; only I met a man in Fishamble-street, and we took share of two pots a porter.

What is his name?—Macklin.

And then you went straight home?—Yes.

You saw nothing extraordinary?—Nothing.

At a quarter after eight you left Parliament-street, and you stopped in Fishamble-street, and afterwards walked through Thomas-street, and found all quiet?—I did.

Whom did you find at Killen's?—I found himself and wife, and Moore, and a little girl.

Were there any other people there?—I cannot answer for strangers.

Were there any there; I do not ask the names?—I cannot say whether there were any in the beds.

Were there any other up?—Not that I saw.

You supped there?—I did.

Did any other person sup there?—There were people eating there, strangers that I did not know.

Did you not say there might be some who might be in bed; I ask you now were there any other persons supping besides yourself?—I do not know who they were.

But were there any, whether you knew them or not?—I believe there were.

How many?—Between three and four.

Three and four? what do you mean?—I believe three.

Did you know any of them?—Only Moore. Killen was not attending them?—No, no one but the girl.

Do you know Mrs. Codd?—Yes.

How long after you arrived did she come in?—She was there when I went in.

You did not stop very long at Fishamble-street?—No.

How long might you have been before you got from parliament-street to Killen's?—I could walk it in a quarter of an hour.

How long were you drinking the porter?—About ten minutes.

Then you were near half an hour before you got to Killen's?—I cannot say, I suppose it was.

Then about a quarter before nine you got there?—I cannot be exact.

Was it dark or light when you arrived there?—It was darkish; it was light enough to see any body in the street.

Was it light enough to see in the cellar?—It was.

You ordered supper?—I did.

Were you able to eat by day-light?—There was a candle lighted.

Did you say any thing about disturbances?—No.

Did any of those in the cellar know any thing about it?—No.

How long were you eating your supper?—I could not be long; I suppose a quarter of an hour.

How soon after you went in did you hear of the disturbance?—I cannot tell how long.

You found Mrs. Codd there and you left her there?—She went out and came back, as I believe; she came back again because there was some noise in the street.

So she left her house and went into the cellar because there was a noise?—I do not know where her house was.

But it was a natural thing to leave her house because there was a noise, and go to a cellar?—I cannot be answerable for that.

What was done when the alarm was given?—Killen then went and shut the door, and said, "woman, do not make a noise in my place."

To whom did he say that?—To the woman. And so, to prevent her making a noise, he kept her in; what noise did she speak of?—She said they were killing one another down Thomas-street.

Did she ask him for a candle to go out and fight among the people?—I cannot say whether she did or not: I eat my supper.

Did you ask what was the matter?—I did not mind her; she said they were killing one another.

Did Killen inquire what was the matter?—No.

Did his wife?—No, not that I heard.

Did any of the people at supper?—No.

You remained quietly at your supper?—We did,

A Juror.—Where did you go after your supper?—To Irwine-street.

Did you hear of any disturbance on your way?—No, but I met the army.

Are you certain Mrs. Codd made use of the expression, that the people were killing one another?—She did.

Were there any shots fired before you went out?—No, but after I got out I heard shots towards the Market-house.

When you desired Killen to open the door, what did you say to him?—I said, I was an old soldier, that I was not afraid, and nobody would hurt me.

Patrick Moore sworn.—Examined by
Mr. Mac Nally.

You have served the crown?—I have.

You were in the East India Company's service?—I was.

Where do you live?—In Philipstown.

How do you subsist?—By my labour and my pension.

From whom have you that pension?—From the honourable East India Company.

Were you in Dublin on the 23rd of July?—I was; I came on that evening.

What business brought you to town that evening?—I was working in a quarry for Mr. Tighe on the Naas road.

And you came into town every night?—No, sir, I came on that evening.

Did you see the prisoner, Killen, on that evening?—I did.

Which is he?—There he is [pointing to him].

Where did you see him, and at what hour?—In or about seven o'clock; I saw him first at his place.

What business brought you to his cellar?—I came into town to buy a shirt for my little boy.

What brought you to the cellar?—To take up a lodging and secure my bed.

Did you remain in the cellar all night?—I did, sir.

Did you see the prisoner?—I did.

Down to what time did you see him?—It was twelve o'clock when the people went to rest.

Do you know what it was kept them from going to rest before that hour?—There were a good many women with nursed children belonging to the work-house, and the children were very troublesome with their noise; there were three women with children, and they were very cross; there was one woman and her husband, they had two children who were very troublesome; and there was another woman with a child, and another man and a woman with a child, but I believe that was their own.

Can you say whether the prisoner was out from the time you were there?—I did not see him go out from the time I went in till next morning.

Did you hear any noise that night?—I did.

Where were you?—I was sitting below at the table in the cellar, when I first heard the noise.

What kind of noise was it?—The first noise we heard was shots; somebody came to the cellar door and said, they were killing one another down the street, and Killen got up; I thought he was going out, but he shut the door; I got up from where I was eating my supper, myself and my son, and went to the door, and he gave me a slap in the face for attempting to go to the door.

Did he fasten the door?—He did.

After he fastened the door did he go out that night?—On my oath he did not go out; one of the men was going out, and Killen desired him not to go out; he said, he had not far to go; Killen said, you may get hurted, and do not go out, as it is troublesome.

Did that man go out?—He said he was not afraid; that he would not be hurted, for that he had not far to go, and was a soldier; and Killen said, as he insisted, he would let him out; and he half opened the door and let him out, and shut the door after him.

And you remained till morning?—I did.

Patrick Moore cross-examined by
Mr. Mayne.

You wrought at a quarry at that time?—I did.

You are able to work abroad in a quarry?—I am.

How far from town was it where you worked?—In or about three miles.

What family have you?—A wife and four children.

Do they live at the quarry?—No, but at Philipstown, all except one boy, who is with me.

You brought him with you?—Yes.

And you slept at the quarry?—No, but at Lawrence Tighe's at Blue-bell.

How far from town?—Two miles.

You always slept there but on the 23rd of July?—No, most commonly on a Saturday night we came to town.

Then you came from the quarry and slept in town?—We were ne'er a Saturday night at Mr. Tighe's before.

Then you were only there for a week before the 23rd?—Yes.

And within two miles of your lodging at Mr. Lawrence Tighe's you paid for a lodging in Thomas-street?—Yes.

You said you came in to buy a shirt, did you buy it?—I did not.

Why not?—I had not much time.

Had you not as much time as you expected?—I did not expect to buy it that night, but the next morning.

So you came in upon a Saturday night for the purpose of buying a shirt on the next morning?—It was not the only reason; there was no milk convenient to us in the place, and most commonly all the men were provided of their own.

Then it was not the shirt that brought you to town?—It was the chief business.

And you left the lodging which you had, where you worked, and took a new lodging in town?—There was no place between town and the Blue-bell to buy any thing.

Did you get milk at Killen's?—Yes.

Then you supped upon milk?—Not I, as long as there was beer and bacon I would not.

You went to bed at twelve o'clock?—I cannot exactly say.

Was there a clock there?—There was not that I saw.

But it might be more than twelve?—I am pretty sensible it could not be much more.

At what time did you get your supper?—I was eating my supper when the firing began.

Was not that the firing of the army?—Upon my soul I cannot tell, and I will tell you why; at the time the shots began, I thought it was the army and the mob had fallen out.

That was some hours after you arrived?—It was a good while; I sat chatting with a man who came from Portarlington.

How long had you come in before you got your supper?—Two hours.

What time did you dine?—One o'clock.

And you and your son came into town and did not eat for two hours after?—We did not.

How old is your son?—Eighteen, going on nineteen.

Is he here?—No.

Is he gone to Philipstown?—He is.

Why did you not get your supper before?—There were so many women and children and their husbands that we could not get it.

There were a good many going in and out?—There were.

Did you hear any guess or suspicion of the business before the shots were fired?—I did not, and would not stay if I did.

What road did you come in by?—From Mr. Tighe's to the canal, and from that to town.

Was not that road crowded with people coming into town, and for this business?—I did not see any thing of the kind till I came to the Bason, where I saw a number of people.

Did you inquire of them?—No, I did not. You heard nothing, then, till you heard the firing?—No.

Who was it first told the people in the cellar that there was firing in the street?—I cannot say whether it was man or woman, I believe it was a girl who put down her head and went away.

Then she did not come into the cellar?—She did not.

And this was when you were at supper, and two hours after you arrived in town?—It was.

How often have you been at Killen's within these few days past?—Not often.

Have you not been to visit him and fetch him victuals?—I have.

Where have you been working this same time past?—I have not been working at all where.

Court.—The person who gave the information down to the cellar that the people were killing one another was a girl?—It was as well as I could guess.

And that person who gave that information did not come down, but went away?—She did not come down.

Did any person come down who gave information of it?—No, there did not.

Mr. Mayne.—You have been employed at days in carrying provision to the prisoners?—No, not so long.

How often?—Three or four different days.

And you did not work these days?—No.

You were at Killen's from seven o'clock?—Yes.

Were you in town any day for some time before the 23rd of July?—No, not from the Sunday before.

Do you know the person who gave the information at the door of the cellar?—I do not know; I did not see her at the time I heard a voice; and it was a girl or woman.

Do you know any person who lodges in the house over the cellar?—I do.

Whom?—Mrs. Codd.

Was she the person who gave the information?—I cannot say.

She was not in the cellar that night?—She was, for she received the money from the people who were getting their suppers there, before they would go to bed.

Did she sleep there afterwards?—She went to bed afterwards, as I suppose, with the maid, for she was there in the morning.

Mr. Plunkett.—Did Mrs. Codd go out from the time you went there?—She was not there at the time I went in.

A Juror.—Was she locked in by Killen?—She was.

Court.—At what time before did you see her?—Before that day I did not see her for a week.

Mr. Mayne.—Does Mrs. Codd usually transact business for Killen?—She does by times, and does it usually since that day.

Where is your son?—He is gone home.

How long is it since you saw him?—On Sunday last.

Did he stay with you the night of the 23rd?—He did.

Did he sup there?—He did, and one Kelly, who was drunk, as I came into town, and I brought him there.

A Juror.—How long is it since you knew Killen?—These two or three and twenty years.

What countryman is Killen? is he a Philipstown man?—No, he was born and bred hard by Kinnegad.

Counsel for the Crown.—Were you in court when the other witnesses were examined?—No.

Where were you?—I was outside.

James Crosbie sworn.—Examined by Mr. Curran.

Were you at the prisoner's cellar upon the 23rd of July?—I was.

Whom did you see there?—The prisoner and his wife and another girl.

Did you see any strangers there?—I do not know, never having been there before.

Did you see any other person there?—Not at the present time.

When did you go there?—At half past six.

When did you leave it?—Next morning at seven.

Did the prisoner leave the cellar all that time?—He did not.

Could he have gone out without you seeing him?—He could not.

Did any other persons come in, while you were there at supper?—There did, several.

James Crosbie cross-examined by Mr. Townsend.

Where do you live?—At Portarlinton.

When did you arrive in town?—Two days

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before; I came to town with a nurse child, myself and my wife, to receive payment, and had three days delay.

Are they such bad pay at the poorhouse?—No, but my wife was called and her name was mislaid, and we were put off till Saturday, and then were paid, and we went through the town buying some things.

Where did you sleep the first night?—In another cellar, I cannot say where.

Where did you sleep the next night?—At the same place.

Why did you not sleep there the third night?—The woman who had the place was put out, and had no bed for me, or I would have gone with her; and we took up a lodging at the prisoner's accidentally.

Who recommended you there?—Nobody.

Were you ever there before?—No.

Were you ever there since?—Yes, last night, and every night since. I was summoned.

When you went there at half past six, you saw only the prisoner and wife and girl?—Yes.

Did you know any of the people who came in afterwards?—I did not at that time.

Did you hear their names?—I did; Patrick Moore, who came from the same town with me, I had not seen him for twenty-two years; we fell into conversation at supper, "he asked me, where I was from," I told him from Portarlinton, and he asked me, "did I not know him," I said, he was Moore from Portarlinton.

You had much conversation?—Yes, we had some.

Court.—Did he remember you?—I suppose so; I was younger than he was.

Mr. Townsend.—How did he find you out?—By asking me.

Did you ask him about his family?—No.

Did you know any body else?—Nobody, but my wife.

Did you hear the name of any other?—I did, Mrs. Codd.

Did you hear her name since, or did you hear it that evening?—I heard it then.

Did you hear any shots?—I did, three or four.

Single shots?—Yes.

No volleys?—No.

At what time did you go to bed?—At twelve.

And you heard no volley before that?—No, only three or four shots.

What made the prisoner shut the door?—A woman came down to look for a candle, and said there was a mob in the street killing one another; he shut the door and put a bar across it.

What was the name of that woman?—Mrs. Codd.

And immediately upon her coming down she told this?—Yes.

How soon after did you hear the firing?—In ten minutes.

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How soon after was the door opened?—Not till a man went out.

When was that?—I cannot tell, for I fell into conversation with my wife.

Was there any clock there?—No.

What o'clock was it when the woman came for the candle?—I cannot say.

Were any candles lighted at the time?—They were.

Was there any child there but yours?—No other than I saw.

Is your child a quiet or a cross child?—It is cross by turns.

James Smith sworn.—Examined by Mr. Mac Nally.

Where do you live?—At James's-gate.

Do you know the prisoner?—I do.

He is a tenant of yours?—He is.

What is his general character?—A quiet honest man.

What can you say as to his loyalty?—I never heard of his being accused; nor do I believe he could be accused.

James Smith cross-examined by Mr. Attorney General.

You are a yeoman?—Yes.

In what corps?—In the Rotunda corps, 9th company.

Not in the Barrack corps?—No.

How long have you been a yeoman?—Since 1796.

Have you many lodgers in your house?—A good many.

Do you know Mrs. Codd?—I do.

How long did she lodge there?—Herself and her husband lived with me four years before they separated, and since she has been with me three years.

What apartment has she?—A small upper room backwards.

Her children do not live with her?—No.

Nor her husband?—No.

They reside in the country?—They do, latterly.

And you say she inhabits a room backwards: does it not look into the street?—No, it does not; but she is generally sitting in one of the front rooms.

A genteel woman, you reckon her?—I have no other reason.

She receives visitors and she goes abroad?

—She does not receive many at home, but she goes abroad much.

You take care of the morals of the people in your house?—I do, as far as I can.

Mr. Killen's is a genteel place for a woman to visit in the absence of her husband?—I cannot say; I do not understand you.

Is it a genteel place?—I know it is an honest place; but as to its gentility I cannot say.

They admit people promiscuously?—They do.

Men and women, as they come?—They admit none but honest people.

They admit them without inquiry?—No, do.

How, then, can they know their houses?—I never heard of their having bad people and there are many cellars in Thomas-street that do.

How many beds are there in the prisoner's cellar?—I cannot say; three or four.

Were you at home on the night of the 21st of July?—I was not.

Where were you?—I was in Ringsend; slept there that night.

In whose house?—At one Coogan's.

What brought you there?—We intended to have had a boating party, and I was there for the purpose, when my business was done.

What business do you follow?—A cabinet-maker.

Have you any family?—I have a mother. Are you married?—No.

At what time did you go?—At seven o'clock.

Did you go through Thomas-street?—No. All was quiet as usual?—Yes.

There was no extraordinary appearance, no gathering of people?—No.

Did you go alone?—No.

Who were with you?—A young man of the name of Murphy, from Bowbridge.

Did he sleep at Ringsend?—He did.

Did you meet any other person?—Yes; at Byrne, who keeps a cloth shop in Fane-street.

Did he sleep in Ringsend?—He had lodgings there for his health.

When did you hear of the disturbance?—Next morning.

Did you go upon the boating party?—No.

What did you do?—I returned to town.

Did you join your corps?—No.

When did you join it?—When the drum beat to arms.

When was that?—On the Tuesday after.

But on Sunday you did not join your corps?—No.

Nor on Monday?—No.

Nor on the morning of Tuesday?—No, when there was a necessity I did.

Were you joined with the Rotunda division at that time?—No, nor for six months after the peace.

Then you left them?—Yes.

And you joined again on Tuesday?—Yes.

In what part of the street is your house?—

Just at the back gate.

Have you heard the place described when lieutenant Brady fired the volley?—No, sir.

You have been over the ground since?—I went to the dépôt.

Did you hear where lieutenant Brady fired upon the mob?—I heard it was at Dirty-lane.

Did you hear that a party of the 21st regiment, under lieutenant Brady, fired upon the mob and killed some of them near James's-gate?—I never heard it.

And you do not believe it?—No; I do not say that.

But did you hear it?—No; I heard it was at City-lane.

Court.—Is the Rotunda division your next corps?—No; but on Tuesday night I met a grenadier of the corps, and I joined that corps then.

What corps did he belong to?—To the 9th company.

Prisoner, John Killen.—Did you ever hear of the cause of the separation between Codd and his wife?—He is insane by times, and broke the furniture, and did mischief. He sunk his property for life, and receives a small pittance, and he gives part of it to her, and she does plain work.

Counsel for the Crown.—You felt compassion for her at the time?—No compassion, in any way or other.

Court.—Does she leave her children always with this insane man?—I suppose so.

A Juror.—You say you belong to the Rotunda corps, the 9th company?—I do.

Were you attached to any company?—I was.

How long ago?—About a month.

What was your cause for quitting one company and going into another in the same corps?—I cannot explain it.

To what company were you first attached?—To the grenadier company.

Did you ever hear that there was a meeting of the privates of the corps, to investigate the conduct of some members of that company?—I did.

Did you get notice to withdraw yourself from that company?—I did.

Mr. Mac Nally.—Are you now attached to another company of that immaculate corps?—I am.

James Mac Evey sworn.—Examined by *Mr. Mac Nally.*

Do you know the prisoner, John Killen?—I do.

Do you know his general character?—I do.

Have you ever heard his character impeached with respect to his loyalty or honesty?—I never have.

EVIDENCE ON BEHALF OF JOHN MAC CANN.

Philip Lynch sworn.—Examined by *Mr. Curran.*

Do you belong to any yeomanry corps?—Yes, the Sandymount corps.

Do you know Mahaffey?—A little; I have been acquainted with him not more than a year.

Are you acquainted with his general character?—I could not know his general character; I have heard of him.

Are you able to form an opinion of your own as to his general character in life?—I will tell you, I believe, what I have been summoned for upon this trial.

Mr. Baron Daly.—You are to give evidence of general character, from what you have heard of the man; you are not to tell a

particular matter which you may have heard; you are to give the result of your judgment from the character.

Witness.—If I can believe—

Mr. Baron Daly.—That is not the question. Can you undertake to say, what is his general character.

Witness.—But all things I hear I am not to believe.

Mr. Baron Daly.—You are called to give an opinion upon your oath, whether you know the character of the man; and having done so, whether he is to be believed upon his oath from that knowledge of his character. Do you know his general character or not?—I heard a good deal of his general character, within less than a year.

Mr. Mac Nally.—Is he deserving of credit upon his oath?—I would not believe him.

Philip Lynch cross-examined by Mr. Attorney General.

Where do you live?—In Ringsend.

You belong to the Sandymount corps?—Yes.

Pray how long?—Not three weeks.

Were you ever in any corps before?—No.

Where did you live during the last rebellion?—I was a servant then.

What are you now?—A yeoman.

Have you no other business?—I left service and went into business and failed; I put my boy into the Pigeon-house, till the times would get better, and I got into a corps, which I will endeavour to live by.

How is your son employed?—In the Laboratory, making cartridges.

How long has he been there?—Only a few days.

Where did you live before you went to Ringsend?—In Hanbury-lane.

At what number?—No. 22.

Were you ever at Stradbally?—I was.

How long did you stay there?—Only one day; on the next I went to a fair at Athy, and from that I went to a fair at Maryborough.

Do you know Mr. Coogan at Ringsend?—No.

Who recommended your son to the Laboratory?—Captain Godfrey.

Who recommended you to him?—No person.

How old is your son?—Going on ten years old.

What business did you follow in Hanbury lane?—I lodged there, and I went to a man of the name of Kirwan; I do not know where he lives, some where near Cross-stick-alley, and he sells soft goods, and I went with him upon half profits.

Had you a shop?—No.

You are a hawker?—I am.

And you set out with a man you never saw before?—I knew the man very well.

With whom did you live in Dublin?—With counsellors Crofton and O'Hara, and several others.

Was it in 1798 you left service?—It was since.

What did you do then?—I set up in the huxtery business; and not knowing it, I failed.

Then you failed as a pedlar?—Yes, and went with Kirwan, and he gave me half profits; and upon returning to town, I found it disturbed, and went into a corps.

That was to protect yourself?—Yes, I offered myself to be a soldier.

Do you know any of the Liberty Rangers?—No.

Or the Upper Cross corps?—No, but I know many of the yeomen.

Court.—What do you mean by securing yourself?—I wished to be in the army in some point. I had no property to get into business, and until I got some I wished to be a yeoman or a soldier to serve his majesty when it was necessary.

Mr. Attorney General.—When did you offer yourself to the corps?—The very night I was accepted.

When was that?—Not three weeks ago.

Who introduced you?—One Connor.

Is that Martin Connor?—Yes.

Were you here yesterday?—Not here, but I was in the court.

Was he here?—He was.

To be examined?—He was in the summons.

Have you ever had any conversation with him as to what passed here, or what was to be done?—I do not believe he knew what was to be said.

Was he not one of the persons whom you heard speaking of Mahaffey?—Undoubtedly.

And he is one of the persons upon whose information you form the opinion you gave?—No, not upon his alone.

But he is one of the persons?—He is.

You know Keegan?—I do not know much of him, but have spoken to him.

Did you meet him in Patrick-street, when he took a glass of port and water?—I did.

And you were of the party?—I was.

And that was the time you settled to come here?—I do not know.

But they talked of it?—They did.

And you were here yesterday?—I was.

Court.—When did you leave Dublin with Kirwan?—I do not know the day; I was at Stradbally, and from that I went to Athy, and from that to Maryborough; and then I went to Stradbally again, when I heard of the disturbance.

How long were you away from Dublin?—About a month.

Did you ever travel with him before?—Not in the country, but about town and the Rock.

You had been a servant, and afterwards, about a month before the rebellion, you went through the county of Kildare, and the Queen's county with Kirwan?—Yes.

John Andrews sworn.—Examined by Mr. Curran.

Do you know the prisoner, Mac Cann?—I do.

Did you see him upon the 23rd of July?—I did.

Where?—At his house in Bridgefoot, near Bonham-street. I went to his house after paying my men, about a quarter before nine o'clock: I staid there some time, about twenty minutes, drinking porter.

What did you see him do?—I saw him answering his company, and drawing drink in them.

Did you leave him so employed?—The house was pretty thin when I left him; Mr. Salter went out with a pot of porter; I staid fifteen minutes after that, and that is all the notice I took of him.

John Andrews cross-examined by Mr. May.

You are not very exact as to the time you were there?—Indeed I am, because I do not think I could be more than half an hour from the time I discharged my men till I returned. I did not drink more than a pint of porter, and no punch.

You had no company?—No, I went to bed for company, but did not meet them.

How far is the prisoner's house from Bonham-street?—It is at the very corner.

And how far is your house from his?—It is between that and Marshall-lane, and I have a timber yard there.

How far is that from Mass-lane?—I cannot form a belief; I suppose it is three hundred yards and more.

Were you at home all the night afterwards?—I was.

A great deal of mischief was done?—There was.

Many murders were committed?—I did not hear of them till next morning.

But there were many?—I heard Colonel Browne was killed there.

And many others?—The rest were killed in Thomas-street.

And some others in Dirty-lane?—There were some, as I heard.

Did you not know any thing of the rebellion going on till next morning?—I saw a vast quantity of men and pikes going up and down the lane.

Passing Mac Cann's door?—I did not see Mac Cann's door then. I was afraid to look out after that time.

This was after you left Mac Cann's house?—It was.

The firing did not begin till you got home?—No.

There were not more than the usual number of men at Mac Cann's?—Not more than usual. There was a number of smiths and workmen from the different places and yards about there.

There was no noise of firing till you got home?—There was a noise in Thomas-street, but none in Dirty-lane.

Mr. Curran.—I have to express my humble hope, that your lordships will not think this examination right. The fullest scope

should be given respecting the character of the prisoner; but the witness is interrogated as to his own character.

Lord *Norbury*.—The witness was examined as to the place where the prisoner was.

Mr. *Mayne*.—I am interrogating him respecting the very facts, which were the subject of his direct examination.

William Salter sworn.—Examined by
Mr. *Mac Nally*.

Where do you live?—In Bonham-street.

What business do you follow?—A hide and skin broker; I buy for tanners, alderman Hatton, and others.

Do you belong to any corps?—I do.

What corps?—The Liberty Rangers.

How long?—The week after the rebellion.

Do you recollect the 23rd of July?—I do, and will ever.

Did you see the prisoner, Mac Cann, that night?—I did.

Where does he live?—He keeps an ale-house at the corner of Bonham-street.

Near to you?—Very near.

Was it at his own house you saw him?—In his own house.

At what hour that night was it that you saw him?—It was a little after nine, but a few minutes, under or over.

What business brought you to his house?—My business was, the hearing of the business.

What do you mean by that?—I heard by a woman a few minutes before that there was to be a turn out, and in consequence of hearing it, I went to three acquaintances of my own, and told them what I heard.

How was Mr. Mac Cann employing himself when you went in?—He was employing himself as usual; I called for a pot of porter, and paid him for it, and I returned home; and in fifteen minutes after the whole pikemen of my quarter marched by.

Did you see Mac Cann again that night?—No, I thought better of it than to go out.

How long have you known Mac Cann?—Seven years.

Can you speak to the loyalty of the man?—I never heard but of his being an honest, industrious man; but as to his loyalty I know nothing of it.

Have you heard any thing said against it?—No.

William Salter cross-examined by
Mr. *Solicitor General*.

This was at half after nine o'clock?—No, it was not so late.

You saw no appearance of violence?—No.

But you were a little surprised at the crowd of people from what the woman told you, and you got home?—I did.

And some time after that the noise began?—In fifteen minutes after; then I saw the men, and after that I heard a shot.

You know the prisoner's house?—I do.

He has a servant?—He has, I believe, and a boy that draws porter.

With regard to his loyalty you know nothing?—I found him industrious, and that is all I know.

Hester Callaghan sworn.—Examined by
Mr. *Curran*.

Where do you live?—In John Mac Cann's house.

Did you live there upon the night of the disturbance?—I did.

Did you see him any time that evening?—I did.

Where?—At his own house.

Were you living there?—I was.

Are you able to say where he was from the disturbance breaking out during the remainder of the night?—He was in his own house from seven in the evening; he did not leave his house till morning.

Did you stay up all night?—I did till Mr. Darley came.

Where did you stay?—I was sitting up with the prisoner, and alderman Darley ordered me to go to bed.

What brought him there?—He came about 12 o'clock, to search for arms, I suppose.

Was the house searched?—It was.

Was any thing found?—Nothing, but Mac Cann in bed.

Hester Callaghan cross-examined by
Mr. *Plunkett*.

The prisoner was in bed?—He was.

And at 12 o'clock the next day alderman Darley came?—No, but at night.

Then the prisoner went to bed at eleven, I suppose, when every thing was quiet and silent?—It was at that time he went to bed.

But you did not go to bed?—No, he wanted me, but he could not get me, nor would I go to bed.

When did the disturbance begin?—About eight, in my opinion.

What time were the shots fired?—There were none; yes there were.

At what time?—About half-past eight.

Did you see Salter there?—I cannot say whether I did or not.

Did you see Andrew there?—I cannot say.

Did you see any body?—No, not a single creature.

How long before the disturbance had he shut up?—After the shots went past he ran out and closed his windows; it was after a man went through the streets with a pistol in his hand, firing every way.

Did he fire in at the window?—No, but along the street every way. I looked out and saw him, and then ran down to Mac Cann.

Whom did you see?—Mac Cann, his wife, and a brother, and a servant, and a girl.

When did you see the brother?—I saw him this day.

Was he there that night?—He was.

Were there any persons drinking in the house?—No; I cannot say; there might.

Did you see any other persons there?—I heard there were a good many there before.

Are you a servant there?—No; but I lodge there.

Were there many people there?—I saw Mr. Fagan's men there at the pay-table.

Were there any others?—Would you have one to go through a public-house to see all the men that were there?

Have you a husband?—I have.

Where was he that night?—In his room; he had a sup in head, and went to bed with the children.

With whom does he work?—With Mr. Fagan.

Was he with Fagan's men in the tap-room?—He was, for some time, but not at that time.

He lay down till morning?—He did.

And did not hear any thing of the disturbance till next morning?—No, we did not alarm him till alderman Darley came, when he asked what was the matter?

Did the alderman find your husband and Mac Cann in bed?—He did.

What kept you watching Mac Cann all night?—He came up to his own room.

That is a distinct room from your's?—It is opposite my room, and I could see him.

How could you see him when he was in the tap-room?—I was in and out.

For what purpose?—To get clothes for a washerwoman.

You saw no crowd in the street?—No such thing; I have told you all I know, you need not cross question me.

Mary Herbert sworn.—Examined by Mr. Mac Nally.

Are you a married woman?—Yes.

Do you live in the house of the prisoner, John Mac Cann?—I did.

Did you live there upon the 23rd of July?—I did.

Did you and your husband lodge there?—We did.

Do you recollect whether there was any trouble in the city that evening?—I do.

At what hour did you first hear that there was any trouble in the city?—Between half after eight and nine o'clock.

Where did you hear it?—I heard a noise through the street, and looked out of a window.

Did you see the prisoner after you heard that noise?—I did.

Where?—In the bar.

What part of the house did you live in?—In the top part.

Is there a hall door besides the door into the shop?—No, but the one door.

So that the lodgers must go through the tap-room?—They must.

Can you say whether the door of the house was shut that night?—I can; I saw it shut.

At what hour?—About half past eight.

Can you say who shut it?—I saw Mr. Mac Cann shut the door, and lock it, and take the key out of the door, and Mr. Mac Cann was there.

Where was he at that time?—He was standing in the tap-room.

Did you remain there any time?—I did.

How long?—Five or six minutes.

Did you see him afterwards again that night?—I did.

When?—In about five or six minutes again I came down and saw him; I was not ten minutes without seeing him, from half past eight till half past nine, and to the best of my knowledge till ten o'clock.

What was the space of time from your first seeing him till you last saw him that night?—To the best of my knowledge there was not ten minutes between every time I saw him.

What was the latest moment of the time you saw him?—I saw him about half past ten when he had a candle in his hand going up stairs to bed, as I supposed.

Did you see him that night after that time?—No, I did not.

Mary Herbert cross-examined by Mr. Mac Nally.

You say you lodged at Mac Cann's house?—Yes.

Do you lodge there still?—No.

When did you leave it?—I have taken a shop.

When did you quit Mac Cann's?—Eight days last Monday.

How long did you lodge there before the rebellion?—Eight months.

Did your husband lodge there that time?—He did.

When did he go to bed on the night of the 23rd?—About eight.

And did he not get up afterwards during the night?—Not till the army came and roused him up.

He and Mrs. Callaghan's husband went to bed and slept it out, without hearing of the disturbance?—I cannot say.

You did not tell him of the disturbance?—No.

But from eight o'clock he slept quiet, notwithstanding all the noise?—I did not say he went to bed at eight o'clock.

When then?—He came home at that time.

And when did he go to bed?—At half past eight.

The house, you say, was shut up?—It was. It was after that he went to bed?—It was.

Did he dine at home?—He does, when he comes home at night.

He went to bed drunk?—No; he was not very sober, nor drunk, but said, "mischief, or no mischief, he would go to bed."

Do you remember the last rebellion?—I do.

Where did you live then?—At Longwood, in the county of Meath.

Was any house burned in which you lived?—No, I cannot say; not the house in which I lived.

Was any house belonging to your family stroyed?—I cannot say; my family is very ge.

You say, Mac Cann's house was shut up en your husband went to bed; no person s admitted to drink after that?—None but family of the house; they might drink as y please.

No person drank there after half past eight lock?—I am on my oath, and cannot say, ither the family drank or not; but the use was shut up at that time, and all who re within were kept within.

Did you know who were there?—There ght be strangers for aught I could see.

Did you not say, you came down?—I had business but to go through the tap-room.

At what time did you go to bed?—Not at

You were frightened?—I was very much.

Did you talk to Mrs. Callaghan about it?—annot recollect.

She staid up?—She did.

And you talked to her?—I was not think- of Mrs. Callaghan when I came here; and not say whether I talked to her or not.

Why were you going up and down every minutes?—For fear the rebels would break through the door.

And every time you went up and down you Mac Cann?—I did.

Was Mrs. Callaghan with him all that time? She was not.

Did Mac Cann go to bed when he shut the or?—No, he did not; for I saw him at half st ten, to the best of my knowledge, as I d no clock or watch.

And Mrs. Callaghan was not with him?—o, I saw her in the tap-room and on the by.

Did you hear any thing of this matter be- e it broke out?—I never heard of it till that ght.

Nor ever talked of it to any body, two or ee days before?—No.

Did your husband tell you of it?—No.

You never told Mr. Hamilton's servant out it?—No.

James Fagan sworn.—Examined by Mr. Curran.

I understand you live in Bridgefoot-street? I do.

Do you know Mac Cann the prisoner?—I

How long?—Six years.

Do you know his character?—I know him be an attentive industrious man in his bu- ness.

Have you ever heard any imputation upon loyalty?—I have not, till the present bu- ness.

Aaron Isod Dogherty sworn.—Examined by Mr. Mac Nally.

Do you know Mac Cann?—I do.

What business do you follow?—A porter ewer.

Where do you live?—In Watling-street; my brewery is in Bonham-street.

Are you acquainted with Mac Cann's cha- racter?—I am.

Have you ever heard his loyalty impeached?—Never.

Aaron Isod Dogherty cross-examined by Mr. Townsend.

Did you hear his character spoken of be- fore this time?—No.

You supply him with porter?—Yes, sixteen or seventeen hundred hogsheads.

Then he must have many people resorting to his house?—He must, a great many.

William Grumley sworn.—Examined by Mr. Curran.

Do you know the prisoner Mac Cann?—I do.

How long?—In or about nine years.

What character has he borne during that interval?—I have good reason to know his character; he lived with my father four years; he was an old infirm man; and during that time the prisoner conducted himself with propriety and honesty.

Have you known his character since?—I have, living in the neighbourhood.

Have you ever heard his character for loyalty impeached till this occasion?—No.

[Here the evidence for the prisoners closed.]

The counsel upon each side relinquished their privilege of speaking to the evidence.

SUMMING UP.

Mr. Baron *Daly*.—Gentlemen of the Jury; this is a late hour; and fatigued as we must all be, I shall, as far as the justice of the case will allow me, take up as little of your time as possible. The evidence is exceedingly voluminous; it will be necessary for me to state such facts as are material, and you, I am sure, will attend to it with patience.

The prisoners stand indicted for high treason, in compassing and imagining the death of the king, and conspiring to levy war; and it is stated that they did actually levy war.

The facts proved are of such a nature, that if they are believed by you, they go to substantiate this charge; it is for you, however, to weigh the evidence, and as you give it credit, to determine accordingly.

With regard to the preliminary evidence, it will not be necessary to trouble you with it. It makes no part of the case of the prisoners or either of them, to dispute that fact: on the contrary, all the witnesses for them admit it, and therefore it would be idle in you to throw away any portion of your time in debating that which cannot admit of any question, that a general insurrection took place upon the 23rd of July in Thomas-street, and the neighbourhood thereof.

The first evidence, which I shall detail to you, is that given by Donough Mac Creight,

which was offered merely for the purpose of showing that persons were forced to join in that insurrection, who had no inclination for it; and how far that supports the testimony of the other witnesses or not, you will determine.

[Here the learned judge stated the testimony of Mr. Mac Creight, and the other witnesses examined on behalf of the prisoner, and then proceeded.]

This, gentlemen, is the whole of the evidence for the crown; and it is necessary to make some observations upon it, more especially as it was observed by the counsel for the prisoners, in stating their case, that the witness Mahaffey was seeking to save his own life, and that he was an acknowledged informer. What inference you may draw with regard to his being an informer, it is not for me to say: the counsel has endeavoured to impress upon your minds, that Mahaffey joined the insurgents voluntarily; he swore upon the table that he was forced. If you believe that he joined them voluntarily, he is an informer, and of the worst kind, because he is not a candid informer. But he is represented as an acknowledged informer; I take an acknowledged informer to mean one or other of these two. A man who is accused of a positive crime, first confesses it, and afterwards accuses others; or a person taken in the very act of committing the crime, and afterwards accuses others to save his own life. But Mahaffey is neither of these; much less is Ryan. It appears from their evidence, that when they were taken, there was no positive charge against them; they were taken on suspicion, by the vigilance of the magistrates, who were on the watch for strangers passing through the country. It also appears, that when they were arrested, and without any charge exhibited against them, they told the story as they did here. That can by no means convey the charge of an acknowledged informer, as represented. With regard to their having joined the party voluntarily, there is no direct evidence before you; and if it can be collected at all, it must be from something in their own evidence, or their manner of giving it.

Now, I have been examining the circumstances with a desire, if I could, to find any thing which would show they were not telling truth; and the circumstances I collect are, that Ryan is the last person with whom another would have joined in an act of rebellion; a timid, sickly man, incapable of exertion; frightened at every stir; so that it appears to me (but of that you will judge) that he was the last man who would join in such a business; and it appears, that the same force was used against him as there was against Mahaffey. They remained together the whole time, they were in the tumult, and escaped together. If, after that, you believe they joined together voluntarily in that party,

you ought to reject their testimony. If there are any other circumstances which show they did, I should be obliged to any of you, gentlemen, or to any person in court concerned, or anxious for the prisoners, to point them out to me. But if no such circumstances exist, I do not see any part of their conduct that is not perfectly consistent with men in their situation. They quit the town to be sure, and proceed by various courses; but they do so not only from not knowing which party prevailed, but that even if they did, they knew, that being among the tumult, and being men of inferior situation, they might be involved in danger. I shall observe no farther upon the evidence for the crown; I leave their credit entirely to your judgment.

Both the prisoners have gone into a defence called an *alibi*; with regard to which, if it is true, I shall observe, that it is the best defence that can be advanced. But, on the contrary, if it turns out to be untrue, it amounts to a conviction.

[The learned judge then stated the testimony of the several witnesses for the prisoners, making occasional observations thereon; at the conclusion he said:—

This is the whole of the evidence for the prisoners. I shall only farther observe, that if you believe the testimony of Hester Callaghan and Mary Herbert, they go completely to show, that Mac Cann was not out of his own house. Ryan has not identified the prisoners, and therefore that depends upon the testimony of Mahaffey. You have heard how far he is corroborated—you have heard the witnesses for the prisoners, and you will see how far they corroborate or contradict the others. It is your duty to decide according to your opinion of them. If, upon the whole, you have any doubt, you should lean to the side of mercy; but that should be a rational doubt, such as men upon their oaths may entertain. And I am also to observe, that the evidence of character will tend greatly to strike the balance, if a doubt should create a balance in the case. But I am able to observe, that evidence of mere private character is not so relevant to the charge of treason, as a character of active loyalty. The evidence is strong to show private honesty, and it may tend to show, that a man having a character for honesty, is not likely to be concerned in treason; but we all know, that men remarkable for honesty may be deluded into schemes of treason, and therefore the only character which would be strongly applicable, would be a character for loyalty. No one of the witnesses speaks affirmatively of the loyalty of the prisoners. It is more negative evidence as to that, "they did not hear it impeached."—Upon the whole, gentlemen, you will decide.

The Jury retired for forty-seven minutes and returned a verdict finding both prisoners GUILTY.

The prisoners were remanded, and the Court adjourned at ten o'clock at night.

On Friday, September 9th, the prisoners were put to the bar, and asked, what they had to say why judgment should not be pronounced against them.

John Killen.—May I never enter the kingdom of Heaven if I ever handled a pike.

John Mac Cann.—I never left my house, or handled a pike or pistol these five years to my knowledge.

Mr. Baron Daly proceeded to pass sentence.—He said it was with heartfelt pain, the judges were called upon, day after day, to pronounce judgment of death upon their fellow creatures; but that pain was increased manyfold, by hearing assertions of the kind which had then dropped from the prisoners—a denial of guilt which had been so plainly proved, and with that denial they were about to rush into the presence of their God. Nothing but an eager desire to rescue them from the horrid impressions of their own minds, could induce him to add one word of admonition to them: it was impossible for a fellow-creature not to say a word to try to save them from eternal perdition. They were born in humble situations of life, in which happiness was as much to be found as in the most exalted situations; but they wanted what was essential to happiness, a contented well regulated mind. They were both thriving in the stations in which they were placed; but not content with honest property, they lent a willing ear to the suggestions of traitors, and entered into a conspiracy for the overthrow of the government. They took up arms in the execution of this enterprize, but their thirst of blood was so great, that they were diverted from their original purpose, atrocious as it was, invited by the desire to imbrue their hands in the blood of unresisting and unof-

fending individuals. It was proved, that they made use of their weapons upon the bodies of men groaning upon the ground, giving the unfortunate men no time to make their peace with God; no trial was granted them, or any opportunity to make their defence—while, on the contrary, the prisoners, who were proved to have acted in this manner, had a most fair and impartial trial; they had an opportunity of offering every thing which they could. Their trial in this world was over, but they had still a more awful one to undergo, in which their happiness or misery was to be pronounced upon for ever. If they had the education of Christians, in any form of Christianity, they must be convinced that they could not be received, even by infinite mercy, except they were recommended by sincere repentance; and they could not but know, that it was essential to repentance to make an open confession of their guilt. It was their duty, and the only atonement they could make. But it was an aggravation to attempt to deceive their great Creator, who knew every sentiment of their hearts: he, therefore, entreated them, for the last time, and implored them, as they valued their eternal salvation, to disclose all they knew; and might that God, whose attribute was infinite mercy, as well as infinite justice, receive their confession and sincere repentance as an atonement for their crimes.

Sentence was then pronounced in the usual form.

John Mac Cann.—I hope, before it is long, you will find out the corrupt perjury of this villain. I said before, I never left my house from six o'clock that evening, and may I never enter the kingdom of Heaven, if I handled a pike, sword, or pistol, these five years.

The prisoners were executed in Thomas-street.

662. Trial of JOSEPH DORAN for High Treason; before the Court holden under a Special Commission at Dublin, on Friday September the 9th: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.

Friday, September 9th, 1803.†

Judges present:—Lord Norbury, Mr. Justice Finucane, Mr. Baron George, and Mr. Baron Daly.

* From the report of William Ridgeway, esq. barrister at law.

† The preliminary proceedings will be found at the commencement of Kearney's trial.

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Joseph Doran was put to the bar for trial.—He had been arraigned on the third day of September, upon the following indictment:

County of Dub- } THE jurors for our lord the
lin, to wit. } king upon their oath present that Joseph Doran late of New-street in the county of Dublin yeoman a subject of our said lord the now king not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of

3 X

the devil as a false traitor against our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king towards him the said lord the king should bear wholly withdrawing and contriving and intending the peace and common tranquillity of this realm to disquiet molest and disturb and the government and constitution of this realm to change subvert and alter and our said lord the king from the royal state title honour power imperial crown and government of this realm to depose and deprive and our said lord the present king to death and final destruction to bring and put he the said Joseph Doran on the twenty-third day of July in the forty-third year of the reign of our said lord the king at New-street aforesaid in the county of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord off and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death. And that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations and compassings aforesaid he the said Joseph Doran as such false traitor aforesaid on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king at New-street aforesaid in the said county of Dublin aforesaid with force and arms falsely maliciously and traitorously did conspire confederate and agree to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said lord the king within this realm.

And afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at New-street aforesaid in the county of Dublin aforesaid he the said Joseph Doran as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid did arm himself with and did bear and carry a certain weapon called a pike with intent to associate himself with divers other false traitors armed with guns swords and pikes whose names are to the said jurors unknown for the purpose of raising levying and making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king within this kingdom.

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at New-street aforesaid in the county of Dublin aforesaid the

said Joseph Doran as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the said jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said Joseph Doran against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

And the jurors of our said lord the king upon their oath do further present that the said Joseph Doran being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said sovereign lord the king and wickedly denying and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at New-street aforesaid in the county of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom. And in order to fulfil and bring to effect the said traitorous compassings imaginations and intentions last mentioned of him the said Joseph Doran he the said Joseph Doran afterwards to wit on the said twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at New-street in the county of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of him the said Joseph Doran against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

The prisoner pleaded Not Guilty, and being now put to his challenges, the following jury of the county of Dublin was sworn, after two were set by on behalf of the crown, viz

was challenged by the prisoner for want of a second, and three were challenged peremptorily.

James White,	James Cuppaidge,
William Pemberton,	Christopher Eades,
Archibald Hawkesley,	Arthur Keene,
George Cuppaidge,	Jonathan Baguall,
Robert Walker,	Bennett Dugdale,
William Sherwin,	William Davis.

The Counsel and Agents for the Crown were the same as in Rourke's trial.

Counsel for the Prisoner, Mr. Mac Nally.

Agent.—Mr. L. Mac Nally.

Mr. Prime Sergeant.—My Lords, and Gentlemen of the Jury;—The prisoner at the bar is one of those wretched persons who are charged with being concerned in the horrid atrocities of the night of the 23rd of July. Great is his guilt is, the circumstances which I have to state are very few, and the case is very plain. One circumstance of enormity is superadded to those of the other persons who have been tried at this commission,—that the prisoner was a man who was received into the king's employment. He was employed in the King's Ordnance in the Lower Castle-yard, and you, gentlemen, will be satisfied of his identity by some of the persons who worked there.

Upon the night of the 23rd of July, a number of persons, armed with pikes, were seen proceeding through New-street. They were divided into two parties; one proceeded through Freestone-alley; and the witness who will be produced to you observed the prisoner, who had two pikes, one upon each shoulder, walking with this party and conversing with them. The witness knew his person, and where he worked, but did not know his name. The witness, who is a young boy, apprentice to his father, immediately communicated the matter to his father, which I mention in corroboration of the identity of the prisoner.

Gentlemen, these are the circumstances. The facts, if proved, are simple and convincing. It has been the uniform practice of the counsel for the crown to confine themselves to a mere statement of the facts, without colouring or ornamenting, beyond the mere enormity of the facts themselves.

Edward Wilson, esq. sworn and examined.

The witness upon his direct examination gave the same evidence as upon the former trials. [*Vide Kearney's case, p. 711.*]

Edward Wilson, esq. cross-examined by Mr. Mac Nally.

All that you saw was in the city of Dublin?—No; I saw some things in New-street, in the county. It was a continued scene of confusion and warfare; though I was bleeding much, I continued up the whole night, and we were firing and taking up prisoners the

whole night. There were some horsemen appeared in New-street, and I desired them to stop; but they turned back, and I desired a soldier to fire at them, but he missed them.

Court.—What marks of confusion did you see in New-street?—I saw men with pikes, and they were stopped by the watchmen and kept in custody till morning, when they were delivered up to prison.

A Juror.—Did you yourself see any men with pikes in the county of Dublin?—No; but I saw the watchmen bring them up, and the watchmen had the pikes in their hands, and the prisoners confessed they had the pikes.

Lieut. Coulman sworn and examined.

This witness gave the same evidence as upon the former trials. [*Vide Kearney's case, p. 719.*]

Thomas Rice sworn and examined.

This witness proved the proclamation, as in Kearney's case. [*Vide p. 723.*]

Stuart Home Douglas sworn.—Examined by Mr. Solicitor General.

Be pleased to give an account of what happened at the Coombe upon the night of the 23rd of July?—I had charge of the guard-house upon the Coombe.

That is in the county of Dublin?—It is: one part of the street is in the county, the other in the city. An attack was made upon me by three or four hundred people, as well as I could judge from the pikes; as it was dark, I did not distinguish the men, but I heard from others, that there was not room for them to come down; after the first volley I heard a leader urging them to come on, but upon the second they fled, and I gave them a third as they turned the corner of Francis-street.

[Not cross-examined.]

William Harrow called.—Examined by the Court.

How old are you?—Going on thirteen.

Have you been educated by being taught your prayers and catechism?—Yes, sir.

Do you know what an oath is?—Yes.

What would become of you if you were to swear falsely?—I would go to hell.

The witness was then sworn.—Examined by *Mr. Prime Sergeant.*

Consider, before you say any thing, that a man's life depends upon what you say, and therefore consider before you answer. Where do you work?—In the Ordnance-yard.

With whom do you work there?—With captain Godfrey.

Are you an apprentice?—Yes, sir, to my father.

What is his name?—Thomas Harrow.

What is his business?—A smith.

Where does he work?—In the Ordnance-yard.

Do you remember the night of the 23rd of July last?—I do.

What night in the week was it?—I do not rightly know.

Do you remember the night of the disturbance in Dublin?—I do.

Do you know Joseph Doran?—I do.

Look about and try if you see him?—There he is [pointing to the prisoner].

Have you seen him working any where?—I have.

Where?—In the Ordnance yard.

At what work?—Labouring work.

Were you acquainted with his face and person?—Yes, I was, very well.

Did you see him on the night of the 23rd of July?—I saw him on the night of the row: I do not know whether it was in July.

How long ago is it?—I cannot rightly say.

What do you mean by the night of the row?—The night the rebels broke out.

Where did you see the prisoner?—In Freestone-alley.

In what part of the town is that?—One end of it leads into New-street, the other to the Puddle.

Were there any people with him?—There were.

How many?—I could guess about twenty.

How were they distinguished, or how were they dressed?—In the same coloured clothes as usual.

Had they arms?—They had pikes.

How many?—All of them.

Did you see Doran at that time?—I did.

Had he any arms?—He had two pikes upon his right shoulder, and hold of his apron with his left hand.

Had you seen him that day before?—Yes, I had.

Where?—In the yard.

What yard?—The Ordnance-yard.

Now, boy, can you take upon you to swear positively, that you saw Doran that night with pikes going through Freestone-alley?—I can.

Was any person at the head of the party?—Two officers were at their head in scarlet and green; one had a hat and feather and a sash.

Did you at the time mention to any body that you saw Doran?—I did.

To whom?—To my father.

Mr. *Mac Nally*.—My lords, I object to any evidence being given of what the witness said to his father.

Court.—So far as any fact happening at the moment, the witness may give that in evidence.

Mr. *Prime Sergeant*.—When you saw these people did you call out to any body?—I called out to my father.

Court.—At the moment?—Yes.

Mr. *Prime Sergeant*.—Where were you standing at the time?—At my father's door.

Court.—Which way did they march?—Up New-street.

Mr. *Prime Sergeant*.—Did you say any thing at the time?—Yes, sir; I said, "Here is the new pikemen out of the Castle yard." Because I heard there were to be pikemen formed to every regiment.

You thought they were loyal men around the Castle?—I did.

Why did you suppose these men were from the Castle?—Because of seeing the effigy going before them.

Did you see any man belonging to the Castle-yard?—Yes, Doran.

You told your father?—Yes.

Mention exactly what you said?—"No, no," said I, "here are the new pikemen from the Castle-yard." My father looked out, and was going to beat me for saying so for he said, "They were rebel pikes."

Did your father see any of the pikes?—He saw one of them.

A *Jurat*.—Did you tell your father at the time, that Doran was among them?—I do not.

Mr. *Prime Sergeant*.—Did you know his name at the time?—I did not: I said there was a labouring man from the Castle-yard with two pikes.

When did you next see Doran afterwards?—On Monday morning.

Where did you see him?—In the Ordnance yard.

How long was that after the row as you call it?—Two days.

What happened there?—I saw nothing happen there, but I brought Mr. Hanlon, the tower-keeper, to the Castle-yard, and showed him Doran, and he went and tapped him on the shoulder.

For what purpose did you tell Hanlon?—I told him, I saw Doran on Saturday with pikes upon his shoulder, and Hanlon asked him, "Where he had been that night." He said, "He was at Newmarket, and could get people to prove he was at home."

William Harrow cross-examined by
Mr. *Mac Nally*.

I believe, my man, you mentioned the hour. What hour was it?—About nine o'clock.

Do you think it might be a little later?—I do not doubt but it might: I cannot be exact.

It might be half past nine?—I am not sure whether it might.

You are not sure it might not?—We thought it to be about nine.

But you have no reason to say, that it might not be half an hour after?—I do not doubt but it might.

This was a dark night?—It was rather dark. Recollect yourself. As you were told the man's life is at stake, you will tell the truth. Was it not very dark?—Not very dark at the time.

Where were you at the time?—At my father's door.

They did no injury to you or to any person?—No.

They merely passed on?—Yes: one of them ied out, swearing an oath, “ We will give le-cannon to-morrow.”

Who spoke to them?—I do not know. You were not intimate with the prisoner in e yard?—No, but I saw him several times, id knew him well, but did not hear his name. There were a good many people in the rld?—Yes.

Should you know the face of any of them aides the prisoner?—I should; but I did ot see the face of any man from the yard at this man.

Have you never been mistaken as to the ice of a person? Have you never, when alking the street, mistaken an acquaintance? —No, sir.

It never happened to you?—No, sir.

You are thirteen years of age?—Yes, go- ing on thirteen.

This man, however, came into the Castle- ard, on Monday morning?—Yes.

And Hanlon was there?—Yes.

The man, when he was taken, said he could how where he was on Saturday night?—Yes, e did.

And he came to his usual place of work on Monday morning?—Yes.

Had he been any time at work that morn- ing? What time did you call upon Hanlon? —After breakfast.

You saw the prisoner there that morning? —I did.

Did he see you?—I cannot say.

He might have seen you?—He might.

You came after breakfast?—Yes.

And then you had him taken?—Yes.

He returned after breakfast?—He did.

Were there not many persons there, who ake up thieves and rebels? Hanlon, and thers of that description?—I do not know all f them.

Were not the Castle-gates kept close shut n Monday?—They were.

Do you not think the Castle the most dan- gerous place for a man to go to on Monday morning, who had been out on Saturday night?—I believe so.

The prisoner found it the most dangerous place, for he was taken there?—Yes.

Counsel for the Crown.—Did you see any other body of armed people that night?—Not n the alley; but they were in the street.

A Juror.—How long did you know the pri- soner?—I cannot say.

How long do you suppose?—About a month.

Did you ever speak to him?—No.

Are you certain and sure that he is the per- son?—I am sure and certain.

Court.—Are you sure you have known him a month?—A month or better.

A Juror.—When they marched through the alley, did they march in a body?—They went singly; one after another.

Court.—How was the prisoner dressed?— In a brown coat, leather breeches and a white linen apron.

How was he dressed next morning?—I am not sure as to the coat, but I am sure as to the apron.

Counsel for the Crown.—How broad is the lane?—Not broad.

Could a carriage pass through it?—No, sir. Are there lamps in it?—There is one at the corner.

How far is it from your father's door?—A good way. We live in the middle of the alley. Can you see the lamp from your father's door?—Yes.

Was there any light from a shop, or was there any shop open?—A woman keeps a fruit stand near it.

Was she out that time?—No.

How near were you to the prisoner when he passed?—About two yards.

Did you call your father before they all passed by?—I did.

Did he come and see the last man?—He did.

Was the prisoner the last man?—No, he was near the foremost.

Thomas Harrow sworn.—Examined by Mr. Solicitor General.

Do you know the last witness?—I do; my wife says he is my son.

Where do you work?—In the Ordnance- yard, these six years.

In what department?—In the Gunsmith's, under captain Godfrey.

Do you recollect the 23rd of July?—I do.

At what time did you go home that day?— A little after six we are generally dismissed, and I go home always from the yard.

Did your son go home with you?—He did; he always does.

Did you remain at home after?—I did.

Do you recollect being called out by your son?—Very well.

About what time?—About nine.

Was it dark?—It was not quite dark; nor is it dark by that hour in that time of the year. It was not quite dark, for I could dis- tinguish pikemen very plain.

What did you go out for?—The boy called me out, saying, “ father, here are the new pikemen from the Castle-yard.”

Where were you at the time?—Sitting at the fire; and the boy and his mother were leaning over the half-door.

Did you come to the door in consequence of what your son said?—I did, and said “ damn you, for a cur, there are no pikemen in the Castle-yard.”

What passed then?—He said, “ there is a labourer that works in the castle, with two pikes upon his shoulder gone by.”

When you came to the door and had this conversation, did you see any of the party?—I saw one pikeman, and turned back and said “ Damn me, but these are rebels pikes, and we will be all murdered this night.” Some person among the party called out to those before, “ halt! halt!” very regularly, like a

serjeant. I knew it was rebel pikemen; I could see plainly, for the alley is not more than six feet wide; no carriage or car passes, for stones are put up in the end, to prevent children from being hurt.

Where did those persons go?—Up to New-street.

Did you hear any noise after that?—Soon after I heard a single shot fired near the Puddle.

Did you hear any other noise?—In some time, near half an hour, as I think, there came a tumultuous mob, rushing down from the Puddle; and they cried "turn out, you bloody thieves," and they broke the windows of a loyal man.

You did not go out of your house that night?—No.

Are you acquainted with the prisoner?—No.

Have you seen him?—I do not recollect having seen him, only hearing that he worked in the Ordnance.

[Not cross-examined.]

Jury—Are you a labourer in the Castle now? Yes, and have been these six years.

Court.—Do you work in a covered place?—Yes, the armourers all work in a covered place.

Is that in the Ordnance-yard? It is.

Are all the workmen there? No; it is a back place; we do not know any thing of the strangers passing back and forward.

Does your son work in the same place? He does; but he goes back and forward with messages and with coals.

Then he had an opportunity of knowing the prisoner that you had not? He had, by the recourse through the place.

William Bomford sworn.—Examined by *Mr. Plunkett*.

Have you any situation in the Ordnance, in the Castle yard?—I have.

What is it?—Clerk of the checks.

Have you an opportunity of knowing the persons employed there?—I have.

Look at the prisoner at the bar; do you know him?—I do; he was on my list from the time he got into the yard.

How long was he there?—About six or eight weeks before the 23rd of July; I am not quite sure.

He worked in the Ordnance?—He did.

Do you know Harrow?—I do.

Did he work there?—He did.

Do you know his son?—I do; the eldest Harrow was formerly upon our list; lately, I do not know him.

William Bomford cross-examined by *Mr. Mac Nally*.

Can you recollect who recommended the prisoner as a labourer?—I can.

Who recommended him?—Mr. Blood.

I believe you would not have received any

man (particularly in such times as have been experienced) as a labourer in the Castle, without a good character?—We have taken some without recommendation; but this man brought a very good character.

And so he worked there attentively and honestly till the time he was taken up?—He did.

Jury.—Was he a sober man?—I never saw him in liquor.

Court.—Do you speak of his character in honesty or loyalty?—I never heard any thing as to his loyalty.

What then do you say of his character?—That he was an honest, industrious man.

Did he attend his work diligently?—He did.

Who is Mr. Blood?—He is in the city with me.

John Hanlon sworn.—Examined by *Mr. Mayne*.

Have you any business or employment in the Castle-yard?—Yes.

What is it?—Tower keeper.

Were you so upon the 23rd of July?—Yes.

Do you know William Harrow?—Yes, a small lad, that works at cutlery and the gunsmith's business.

He worked there before that time?—He did.

Do you know the prisoner at the bar? Did you ever see him before?—I never took notice of him, till Harrow came and told me the prisoner was one of the people out that night, and that he had two pikes and a white apron; he said, he had the white apron still on him, and if I went in, he would show him, and that it would be a charity to have him taken.

What time was this?—It was some days after that time, I cannot ascertain the time, or the number of days. It was a few days after the "row," as they call it.

A Juror.—Was it more than two days?—It was.

Mr. Mayne.—Did you see the prisoner pointed out by any person?—William Harrow came to me, and brought me to the man, and said, "This is the man who had the two pikes on the Saturday night."

Did he say that in the hearing of the prisoner?—He did; he came with me, shouldered by shoulder.

John Hanlon cross-examined by *Mr. Mac Nally*.

What did the prisoner say upon that?—He said, "If there was any thing against him, he would clear himself, and that it was only to send for him and he would come."

A Juror.—When you spoke to the prisoner did he appear embarrassed?—He did not look any great way embarrassed; he looked a little of course, upon his being accused as a prisoner.

Mr. Mac Nally.—Might not an innocent man be surprised, if he were told by you in the Castle-yard, that he was charged with treason?—I should suppose it would startle any man.

A Juror.—Do you remember perfectly the night of the "row"?—It was on a Saturday.

Mr. Mac Nally.—Of course, the next day was Sunday; can you swear positively it was not on the Monday morning he told you of the prisoner?—I cannot; but the morning he came, he was taken; Bomford's books ought to tell, and I do not know the morning; I believe it was on Tuesday.

Can you say, whether it was Monday or Tuesday?—I cannot.

Was it after breakfast?—It was after breakfast, after the bell ringing.

[Extracts from the proclamation were then read as before. *Vide Kearney's case, ante p. 743.*]

[Case closed on behalf of the crown.]

DEFENCE.

Mr. Mac Nally.—My Lords, and Gentlemen of the Jury;—In this case, trust me, I should feel great satisfaction, if the prisoner stood in the same situation, as if he were tried for felony, where he would not be entitled to the aid of counsel on matter of fact. Because, gentlemen, the case is so completely within your peculiar jurisdiction, and within the reach of every man's understanding, that I shall have occasion to say but very few words indeed. You must have already anticipated what the defence of the prisoner will be, from the weakness of the evidence to support the charge against him. It is not for me to impeach the credit of the boy; because I have no instruction of that kind; but I impeach his infallibility, and I impeach it by saying that he has taken upon himself to allege that, which scarcely any adult in the community would do—that is, to give obstinate, positive evidence of the identity of the prisoner. You will consider whether the human mind, under such circumstances as have appeared, be competent to decide, as he has undertaken to decide, and whether, though he may not have perjured himself, yet it is possible he may be mistaken; and the prisoner is entitled to that humane construction from you; and if you think so, you will with pleasure acquit him.

Gentlemen, if ever there was a case demanding corroborative evidence, it is this case; and the defence which I have to lay before you, will tend still more strongly to make you suspect the accuracy of the boy. The defence will consist of two branches, an *alibi* honestly proved, and a fair character. The testimony of witnesses most credible of unimpeached reputation, will show that this man (the prisoner) after leaving the Ordnance-yard where he worked, went to Ormond-market, and there prepared to go and visit his wife, who is wet-nurse to Mrs. Cousens, who then lived in Digges-street, and who now resides in Harcourt-street; that he was there a considerable time and amused himself in conversation with his wife and the servants of the house, till half past nine at night. It will ap-

pear he was there till it became perfectly dark. He will show, that he returned from Digges-street to his lodging in Ormond-market; and it will be a material circumstance for your consideration, that this man, on the very Monday morning after, was at his work, with all the appearance of innocence, in a dangerous spot for a guilty man to show himself. It will appear he was in the Castle-yard, where numbers of loyal people are employed, and where major Sirr keeps an office, attended by persons accustomed to arrest such as are engaged in criminal practices.

Gentlemen, if that is not conclusive evidence of innocence, it is as strong presumptive evidence of innocence as can be produced in any case of this kind. This is one of the cases, where proof of an *alibi* cannot raise a smile, because it is above suspicion. It is one of the cases which Mr. Justice Foster speaks of, when he says, "an *alibi*, if it appeareth to be founded in truth is the best negative evidence that can be offered; it is really positive evidence, which in the nature of things necessarily implieth a negative." In such a case what is the jury to do? If they believe the evidence for the prisoner, or if they doubt the evidence for the crown, natural justice and common sense suggest that it is their duty to acquit.

The prisoner is charged with being at a certain place where a crime was perpetrated. He disproves that fact by showing that he was in another place at the time when the crime was perpetrated; is not that conclusive? Gentlemen, I should be ashamed to occupy more of your attention, by expatiating upon the nature of that defence. But there is another defence—character unimpeached; and their lordships will tell you, that where a man produces an excellent character, supported by the testimony of credible witnesses, it should be sufficient to raise a doubt in your minds of the testimony of the boy; not by impeaching his credit, but by showing that he labours under a mistake as to the prisoner's identity. He said he swore he never mistook one person for another. I venture to appeal to yourselves, whether you have not upon several occasions mistaken strangers for your friends. A very remarkable circumstance happened here during these trials. A Mr. Courtney, a merchant of great respectability, but of very strong recollective faculties, came voluntarily upon the table to give evidence against a prisoner, and upon Mr. Ball asking him, whether he had not been once mistaken for his brother, and whether he Mr. Ball had not walked with him for some time and spoken to him under that mistake, he admitted the fact. If a lawyer, of Mr. Ball's shrewdness and recollection, could commit such a mistake, surely a boy of the age of the witness would be more likely to fall into one.

But, gentlemen, there is a point deserving serious attention in that boy's testimony. If it was not dark, it was duskish, yet he swore

to the clothes of the prisoner; he was positive as to their colour. When the question was put as to the clothes which the prisoner wore on Monday morning, in the day-light, when there was a full opportunity of seeing them, he would not swear to their colour. He had seen him before breakfast—he saw him when he was taken—yet he could not say what the colour of the clothes then was. Must not that make an impression upon you, unfavourable to the accuracy of his recollection?

Gentlemen, I will not detain you farther. I conceive this is a matter entirely for your consideration. It is of serious consequence; because upon your opinion of the evidence depends not only the man's life, but his fame, every thing which is dear to the human mind! A conviction on a charge of high treason is attended with circumstances calculated to shock even the strongest mind. You must probably, have heard them, when sentence has been heretofore pronounced, I will not repeat them. I leave the prisoner to your judgment and mercy.

[When Mr. Mac Nally sat down, it was stated on the part of the Crown, that Mr. Bomford could ascertain the day of the arrest more accurately than Hanlon, and that it was Monday.

Mr. Mac Nally said, that he admitted it was Monday; and made it part of the prisoner's case, because if he had absented himself till Tuesday there might be some room for suspicion against him; but his appearing abroad on Monday was strong presumptive evidence of his innocence, as to the crime charged upon him.]

Elizabeth Walsh sworn.—Examined by Mr. Mac Nally.

Do you know the prisoner?—I do.

Where do you live?—In Ormond-market.

Where does the prisoner live?—He lodged with me at that time; he slept with an apprentice-boy.

Where does the prisoner's wife live?—In Harcourt-street.

Where did she live at that time?—In Digges-street.

How is she employed?—As wet-nurse for Mrs. Couzens, the wife of an attorney.

At what hour did the prisoner come home, upon the evening of the 23rd of July?—He came home at half past six, and cleaned himself to go to his wife as usual.

When did he return?—At half past nine, and remained in the stall with me.

Till what time?—Till eleven.

What do you mean by cleaning himself?—He took off his working dress, and put on a clean handkerchief and clean stockings.

Can you recollect any particular part of his dress?—I recollect he wore a brown body-coat.

Have you known him long?—Since he was a small boy.

Has he the character of a loyal, peaceable young man?—He always was a peaceable quiet boy.

What do you say as to his loyalty?—I have heard any thing said against it.

Was his conduct upon Saturday evening, the 23rd of July, the same as was usual and customary with him?—It was.

Where was your husband that evening?—He was lying ill, and could not give any account of the man.

Elizabeth Walsh cross-examined by Mr. Solicitor General.

What is your husband?—He is a victualer.

In what part of Ormond-market is your stall?—The corner of the narrow row.

Have you a house there?—We have a very convenient, near the stall.

Did the prisoner lodge there?—He did.

Did he lodge there since May?—He was not a lodger; but I gave him permission to sleep with an apprentice-boy.

What is his name?—Michael Mack.

Your husband was ill at that time?—It was.

Is he recovered?—He is.

What was the matter with him?—A sprained leg, a month before.

Where did he lie?—In the next room to where the prisoner slept.

Was it necessary for the prisoner to pass through that room?—Yes.

Was your husband in bed at that time?—He was in bed from Friday till Sunday morning.

What was your maiden name?—Elizabeth Mac Namara.

Are you a relation of the prisoner's?—It is a very distant one.

How old is your apprentice?—About 17 or 18.

Matters were in perfect tranquillity in Ormond-street that night as usual?—I heard there was a disturbance in Thomas-street, and I verily believe I was the first person who told the prisoner of it.

Where was your apprentice at that time?—In the stall.

Was he there when the prisoner first came?—He was.

What time was that?—Half past six.

Did he never quit the stall the whole of that night?—He did not.

That is his usual course?—It is; and he was at home all day.

Is it usual with him to stay at home the whole night, and never go out upon Saturday?—It is.

How was it that you heard of the disturbance?—From people buying meat from me.

At what time did they come?—About 10 o'clock.

Is it usual to sell meat so late as that?—It is; and till twelve.

What did the people tell you?—They told me, there was a disturbance over the water.

Did the prisoner hear it mentioned?—No.
Had he no curiosity to inquire?—No.
Nor the apprentice?—No.
Were all the other stalls open at that time?
They were.

Did any persons go from the market that night?—There did not.

Did no butcher, or boy, go from the market Thomas-street that night?—I never heard them going.

You had not heard of any other disturbance that evening?—No.

Nor any shots fired?—No.

Did you hear, that Mr. Clarke was fired at near Ormond-quay?—No.

Where did the prisoner go to dress himself?—Up to my place.

At what time did he leave it?—A little after than half after six; he staid some little time in the stall, and then went to dress himself.

From the time he went until he returned, what interval was there?—From half past six till half past nine.

How came you to be so precise?—I generally ask him what the hour is, as he carries a watch.

Were candles lighted?—There were, a little before he came back.

Had you any conversation after he returned?—We had a little.

Did he mention any thing of any disturbance?—No such thing; he said he had gone from Ormond-market to Digges-street.

Who was the person who gave you information of the disturbance?—I do not know; some people who were buying meat.

Do you recollect any thing which you and the prisoner were talking of, after he returned?—No.

At what hour did you shut up?—Not till twelve.

Then you were not alarmed?—No; I took no account of it.

Do you recollect seeing any other at the market that night?—I saw Mrs. Mac Owen, who sells meat there.

Is she here?—She is.

Where did you see her?—She was at her own stall, opposite to mine, and the row is very small.

Did you go up before or after Mrs. Mac Owen?—I left her behind me.

Was she in the stall when the prisoner went up?—I cannot recollect.

Did the prisoner or the apprentice-boy go up first?—The prisoner did; for the apprentice did not go up till twelve.

Had he his apron on?—He had not; he took it off; he never takes his apron when he goes to see his wife.

Did you hear any fire of musquetry?—No; there is always such a noise in the market, that we could not hear.

Jury.—You say, that you kept your stall open till twelve o'clock that night. Did you hear any drums beating to arms through the city?—No.

Does the prisoner usually wear leather breeches?—He does.

Had he not his apron on when he went from the market?—I am certain he had not; because he always cleans himself.

Anne Mac Owen sworn.—Examined by Mr. Mac Nally.

Are you a married woman?—Yes.

What business does your husband follow?—A cooper.

Where does he live?—In Lifsey-street.

You keep a stall in the market?—I do, these six years.

Do you recollect Saturday evening, the 23rd of July?—I do.

How near is your stall to Mrs. Walsh's?—Within four yards.

Your stall is opposite to her's?—Yes.

Could you see every thing which was going on there?—I could; and could hear every thing, if they spoke as loud as I do now.

Do you know the prisoner?—I have seen him go back and forward there these three months, and his wife; and I have often spoke to him.

Did you see him in the evening of the 23rd of July?—I saw him on that night. In or about half past nine he came into the stall and sat down; and I went over and sat beside him, and began to talk to him.

How long did you stay?—Till about eleven, when he left it. I kept my stall open till twelve, as is usual upon Saturday night.

Where did the prisoner go?—I saw no more of him, and cannot say.

Anne Mac Owen cross-examined by Mr. Prime Sergeant.

Were there many people buying meat at your stall?—It was not a busy night, or I would not have had time to talk.

How could you observe what was going on in Walsh's stall, while you were minding your own?—I was not watching her's in particular; but we are accustomed to joke with one another.

The candles were lighted?—They were, a good while before he came in.

And when he came in, you looked at your watch?—No; but he has a watch, and we usually ask him what o'clock it is, by way of joke.

How far from Ormond-street is it to New-street?—I cannot say.

Would you walk it in a quarter of an hour?—That depends upon the manner of walking.

Did you hear any shots fired that night?—No, I did not hear any thing of it, only from one woman, who came crying out, "Did you see my husband? there is terrible work going on over the water;" and I heard no more of it till the next morning.

Is Ormond-market a very refreshing place for a labouring man, who had been working all day?—I cannot say. I did not go into any public house.

It is very good air for a man to refresh himself in?—It is not good air.

Did you hear of any shots upon Arranquay that evening?—No, I did not.

Court.—Where were you upon Friday the 22nd of July?—I do not know where I was: I was at Kilmainham.

What were you doing there?—I was looking at Guinness's factory, having no business to mind.

Did you ask any person what o'clock it was on Friday?—No.

Where were you on Thursday?—At my stall.

Did you ask any person what o'clock it was that evening?—I very often asked Mr. Walsh, or Byrne.

Where were you last Saturday evening?—In my stall.

Did you ask any person then what o'clock it was?—I do not recollect.

What makes you so particular in remembering what passed upon the evening of the 23rd? you were not alarmed?—No, not alarmed.

Was the market as busy as usual?—No; from about ten o'clock hardly any person went through it.

Where was Walsh that night?—I cannot say.

Then there was not much noise that night?—No.

Was the market usually thronged at that hour upon other Saturday nights?—Very thronged.

Did you see Walsh the next day?—I saw him the next day.

Where?—He came down to his stall.

You were intimate with Walsh?—I am.

Where was he that night?—I cannot tell.

Was it Doran you asked, what o'clock it was?—It was Doran.

Was he dressed as usual?—He was.

Was he in the same dress when he came home, as when you saw him before?—He was.

Jury.—Is Walsh ill?—He has been ill twelve months with a hurt in his ankle, and is sometimes confined days to his bed.

Did he appear in the stall that Saturday night?—He did not.

As the place was quiet, did you not hear shots fired?—No.

Nor drums beat?—No.

Nor anything of the business?—Not till next morning, only from the yeomen going by.

Do you recollect any person coming into the stall, and giving Mrs. Walsh an account of the matter?—I do not.

Did you talk about the disturbance that night?—No, for I heard no more than what I tell you.

Mr. Prime Sergeant.—Did not Mrs. Walsh tell you, that she had an account of it?—No.

Was there any other person there?—There was another man and the apprentice-boy.

Michael Mac Namara sworn.—Examined by Mr. Mac Nelly.

You are an apprentice?—Yes.

To what business?—To Walsh of Ormeau market, a butcher.

Do you know the prisoner?—I do.

How long?—Four years.

Where does he lie?—Generally in my master's house.

Where does his wife live?—With Mr. Cousens, in Harcourt-street.

Do you remember the 23rd of July?—Yes.

It was on Saturday?—Yes.

Where were you that day?—At my master's stall.

Do you know where did the prisoner lie that night?—He was along with me.

In whose apartment?—In John Walsh's.

At what time did he go to bed?—About eleven.

Can you take upon yourself to swear he was at home all night?—I can.

Were you in the stall all the evening?—I was.

At what time did he return from his work?—At half past six.

How long did he remain before he was out?—I cannot say.

Did you see him going out?—No.

At what time did he come home?—At half past nine.

Where did you see him when he came home?—In my master's stall.

Where did he remain?—In that stall.

How long?—Till eleven.

Did you see Mrs. Mac Owen?—I did.

Where?—In her own stall, and back as far as forward to ours.

Did you see her there, while the prisoner was there?—I did.

Michael Mac Namara cross-examined by Mr. Mayne.

What relation are you to the prisoner?—I cannot tell; some distant relation.

You are a relation of Mrs. Walsh?—Yes.

The prisoner slept with you that night?—He did.

At what time did you go to bed?—Between eleven and twelve.

You are not certain?—No.

Did you stay up later that Saturday night than upon others?—Yes, later than other nights in the week.

But did you stay up later than on other Saturday nights?—No, not to the best of my knowledge.

How long do you think the prisoner was in bed before you?—About an hour.

What is your usual time of going to bed?—I cannot tell any certain time.

He had slept there some time?—He did.

What is his usual time of going to bed?—I cannot tell; about the usual time I go.

You say, you remember the time he was

to bed that night; can you mention the hour at which he went to bed upon any other night?—No; but to the best of my knowledge, that night he was not in bed till about eleven.

And that is the night above all others, that you give an account of him; what was the reason of his being up later that night than usual?—He generally sits up every Saturday night, as we all do.

Do you say he staid up every Saturday night?—No.

Can you say at what hour he went to bed the Saturday night before?—I cannot say.

At what time did he come to the stall?—At half past nine.

When did you hear that?—I heard it from several.

From whom?—From my mistress and others.

Where did you hear it?—I knew it from my mistress and the people about there.

How did she know it?—I cannot say.

Jury.—Did you ask your mistress?—No.

Then how came you to know so particularly?—I cannot say, except its being the usual hour of the night.

Was it that time you heard her say it was half past nine?—Yes.

Was Mrs. Mac Owen there at that time?—I cannot tell; she was either in her own stall or ours.

Did she ask the prisoner what o'clock it was?—No.

Were you in the stall when the prisoner came in?—I was.

Did you ask him what o'clock it was?—No.

Did Mrs. Walsh?—I cannot say.

Did Mrs. Mac Owen ask him?—Not that I know of.

By your account the prisoner staid one hour and a half sitting in the stall; how do you know it was half past nine?—I knew it by the night.

How soon after the prisoner came back were the candles lighted?—I cannot tell.

Perhaps they were lighted when he came?—I cannot tell.

You cannot tell whether the candles were lighted or not?—No.

Did he bring any thing in his apron when he came back?—I cannot tell.

Did you look into it?—No.

Had he his apron on when he came back?—I cannot say.

Was he in his common working dress when he came home at half past nine?—He had.

What coloured dress had he?—I cannot say what is his common dress; he had a brown coat, and leather breeches.

Did you see him at half past six?—I did.

Was there any difference when he came at half past six, and when he came at half past nine?—There was.

What was it?—I cannot tell.

Have you a mind to tell, if you could?—I have.

Do you swear you cannot tell?—I cannot, to be exact.

You speak cautiously, perhaps you were busy?—Yes.

Was it a busy night?—It was not a busy night; I cannot tell.

Then it was like other nights?—No; it was busier than others.

Was it like every other Saturday night?—I cannot tell.

You cannot remember any other Saturday night, when the prisoner did any thing particular?—I cannot.

Were you as busy upon that Saturday night as upon any other?—I believe so.

Then when you speak of any thing particular that night, can you give any reason for it?—No.

When did you hear there was a rebellion raging through the town?—In the latter end of the night, about eleven o'clock.

Who told you?—I cannot tell; there was a report in the market.

Do you mean that there was a general report?—Yes.

What was it?—A report that there were rebels and a disturbance through the town.

Was it from men or women you heard it?—I cannot say.

Where did you hear the disturbance was?—In Thomas-street.

Was the prisoner gone to bed at the time?—I cannot say.

And you do not know whether the prisoner heard of it that night?—I cannot tell.

Did Mrs. Mac Owen know of it?—It was she told the prisoner of it.

Then he was not gone to bed when she told him?—I cannot tell; I believe he was.

Then was it in bed, she told him?—It was.

Did you hear any observations made upon the report?—No.

What was the report?—That there was a great disturbance in the town.

How near is your stall to the street of Ormond-quay?—I cannot tell to the certain distance.

Can you see down to the quay?—We can.

How many stalls are between you and the street?—I cannot tell.

You did not run down to the quay to learn what the rebellion was?—No.

Nor did any other person there do so?—No.

Now, how are you sure that was the night you were speaking of respecting the prisoner?—Because I recollect the night of the disturbance.

Why, you heard nothing of the disturbance, till the prisoner went to bed; and how can you remember every thing so exactly? his dress, and the hour of coming home? how do you remember the night?—I remember since the time he was taken.

He slept with you on Sunday night?—He did.

At what hour did he come home that night?—I cannot tell.

He slept with you on Monday night?—No, he was taken on Monday.

When did you first give an account of this?—Did you ever tell any person what you could say?—I recollect it.

Did you tell any body?—I did; I told that he slept with me all that night.

To whom did you tell it?—To my mistress.

Did she ask you about it?—I told her of it.

When did you tell her that?—When the prisoner was taken.

Had you any conversation with the prisoner when you went to bed?—No, he was awakened out of his sleep.

What awoke him?—My mistress, to call him to eat his supper. He was fast asleep.

Was that the time she told him of the report?—It was.

At what hour was that?—Twelve.

Did you sup with them?—Yes; but I did not eat at the same table, because he sat up in the bed.

Your mistress was there?—Yes.

Was there any other friend?—No.

Was there any discourse about the disturbance?—No.

Did Mrs. Mac Owen get any thing for supper?—I cannot say.

Did she tell the prisoner any thing of the matter?—No.

Did you hear any shots fired?—No.

Court.—You saw the prisoner when he came from his work?—I did.

Had he an apron upon him?—I cannot say.

Jury.—Do you recollect whether he had an apron upon him at half past nine?—I cannot tell.

Had he at half past six?—I cannot tell.

Does he generally wear an apron?—He does when at work.

What kind of apron does he generally wear?—A white linen apron.

Julia Harvey sworn.—Examined by Mr. Mac Nally.

In whose service do you live?—In Mr. Couzens's.

He lives in Harcourt-street?—Yes.

Where did he live upon the 23rd of July?—In Digges-street.

In what situation are you in the house?—Cook.

Do you know the prisoner?—Yes.

Do you know his wife?—Yes.

Where did she live in July?—With Mrs. Couzens in Digges-street.

Did the prisoner often visit his wife there?—Very often.

At what times?—Since he worked at the castle, he came at half past six; before that he came earlier, and often dined.

Did you see him upon the 23rd of July?—I did.

At what hour?—At seven o'clock.

Where?—In Mrs. Couzens's kitchen, just after we dined.

How long did he stay?—Still about six; he remained two hours, and then went away.

Julia Harvey cross-examined by Mr. Solicitor General.

You are well acquainted with the prisoner?—Yes.

How long have you been with Mrs. Couzens?—Five months.

Has the prisoner's wife been there as long?—Yes, and more; she nursed two children.

Has Mr. Couzens any man servant?—He has.

Where is he?—He is here, I believe.

When did you see him?—When I was coming in.

When was it, that the prisoner was there before that night?—I believe he was there Friday.

Are you sure?—No.

At what hour did he come?—The next hour after leaving off work.

At what hour did he come on Friday? you remember the time exactly upon Saturday?—It was about half past six.

And did not go away till nine?—About nine.

Did you look at the clock?—No.

Did you look at the clock upon that Saturday night?—No; but my mistress came down to bury a bird, and that makes me remember it.

Did you take a memorandum of the kind of the bird?—No, but when I heard the prisoner was taken, I wondered at it, he was a quiet a man.

At what time was the bird buried?—Between half after eight and nine.

Did your mistress say what o'clock it was?—No; but there was a lady in the house who looked at her watch to see what the hour was.

You were in the room?—No, but my mistress told me.

She told you, that the lady pulled her watch out and said what o'clock it was?—She did.

Is your mistress here?—No.

Where is she?—At home.

Which would, she or you, gain most credit with the jury?—I cannot say; but I repeat my oath as much as she can.

Who is the lady who was there?—Mrs. Sile.

She had the watch?—Yes.

And your mistress had not?—No, not at that time.

And how came it that this lady pulled out her watch?—Because she was ill, and there was a sedan chair to come for her, and she was uneasy.

Your mistress saw the prisoner?—Yes.

And knew him?—Yes.

And had no objection to his going to the house?—No, for he buried the bird for her.

And put the headstone to it? he was the grave digger?—He was.

Was he dressed as usual?—He was.

What did you give him to take away in his apron?—I observed no apron upon him.

And he came from his work?—I suppose so.
And you never observed his apron upon him?—No.

When did you hear he was taken up?—On Monday.

At what time was he there again?—He breakfasted there on Sunday morning.

At what time?—I cannot say; he came before I returned home; it was past nine.

Was he there on Sunday evening?—I cannot say.

Where were you on Sunday?—I do not recollect.

Then probably it was Friday and not Saturday evening that you have been speaking of?—No, for there is a great difference between my work on those nights.

When was the prisoner taken up?—On Monday.

Do you recollect where he had been on the Sunday?—No.

So you pretend to recollect what passed on Saturday, but you recollect nothing with respect to Sunday, though the prisoner was taken the next day?—I do not.

Connor Kelly sworn.—Examined by Mr. *Mac Nally*.

You are servant to Mr. Couzens?—I am.

Is he in town or in the country?—He is in the country.

How long since?—Since Saturday fortnight.

Do you know the prisoner?—I do.

How long?—Two years; his wife has been nursing for Mrs. Couzens.

Is he in the habit of calling there to see his wife?—He is.

Did you see him upon the 23rd of July?—I did.

Where?—At my master's house in Digges-street.

At what hour?—At half past six I let him in.

At what time did he go away?—About nine.

Did your mistress see him?—I understood she did; I heard her say she did.

Connor Kelly cross-examined by Mr. *Plunket*.

Where have you been during the last hour?—In court.

You heard the last witness examined?—I did.

You heard every thing she said?—She said nothing but what was true; I heard her mention what I knew to be true.

You were not anxious to hear what she said?—No, I was not; I have been attending these five days.

Has Mr. Couzens any other man servant?—No, I am thorough servant.

You let the prisoner in, you say?—Yes.

He came fresh from the castle-yard?—I cannot say.

He laboured there?—He did.

Did he not say he came from the castle-yard?—No, he did not.

Was he in his usual dress?—I believe he

was; I think he had a brown coat, and leather small-clothes.

That was his common working dress?—I suppose so; it was a coat his former master gave him, and he wore it for decency.

Did you remain all the evening in the kitchen?—I did not; I went up, and got the tea-things for my mistress; and my master was in the parlour.

Was any body with him?—I do not recollect, though he is seldom without somebody.

Were there any persons with your lady?—Mrs. Siloe and Miss Pope.

The former is a sickly woman?—She is.

You called a chair for her?—No, I did not.

What disorder did the bird die of?—None, for the cat killed it.

Was it upon that day?—Yes, for the prisoner was getting worms for it, and the cat killed it, and it was buried in the garden.

At what time was this?—About eight o'clock.

Did your mistress go into the garden?—She did, and it was determined to bury it immediately.

When did you see the prisoner again after this night?—On Sunday morning.

At what time?—About nine, or something better.

Had you heard of the disturbance before he came?—I did.

Had you any conversation with him about it?—No; for I had been out in the evening, and heard the drum beat to arms.

Did you talk to him about it?—I told him I heard the drum; he said he was sure there was; for upon coming to us he heard of lord Kilwarden's death.

That was the first he heard of the disturbance?—It was, as I understood.

Did he say, he was much surprised at hearing it?—He was.

Did you express any pleasure at hearing he got safe home?—No such thing.

Then was it upon the next morning he first heard of the disturbance?—Yes.

And not in the evening?—Not at all; because he told me, it was upon coming to us that morning, that he heard of it.

Were you not surprised that he had not heard of it before, living in Ormond-market?—No, I was not, for I knew of it by going into Grafton-street, to Mr. Wilkinson's, to get a cap for my mistress.

Where did the prisoner lodge?—At Mrs. Walsh's.

Have you seen her?—I have seen her at Mrs. Couzens's.

Does she wait on your mistress?—She comes to see the prisoner's wife.

Have you seen Mrs. Mac Owen?—I have.

When?—Some days ago.

Have you seen her within these few days?

—No, not these few days.

Did any thing pass with regard to what evidence you could give?—No such thing; only she used to ask me how the trials went on, expecting the prisoner would be tried.

Do you know the apprentice-boy?—I do.
And you have talked with him?—Only to ask him what time the prisoner went home.

Then you talked to them all about the evidence. Can you say why your mistress is not here?—If she thought it necessary she would come, for she has a regard for the prisoner, and every day asks something about him.

Mr. *Mac Nally* said, he would give directions that Mrs. Couzens should be sent for.

David Courtney sworn.—Examined by Mr. *Mac Nally*.

Do you know the prisoner?—I do.
How long?—Since the 20th of March, 1794.

Have you known him from that down to the present time?—I have.

I presume you are acquainted with his general character?—I am.

What character does he bear, as to affection to the government of the country?—I cannot say any thing as to that.

You never knew any thing as to his politics?—Never, till this affair.

Has he had the character of a peaceable man?—During the time he lived with me, till 1796, no man could conduct himself more quietly; he left me, and I could not tell the reason, but he wished to go to the country, as he said. I met him in 1800, and he said he was out of place; I told him I had not room for him; he said he would labour, and I employed him till May, 1802, when I took him as an inside servant; and in May, 1803, I discharged him for drunkenness, and neglect in consequence of that.

Jury.—To what part of the country did he go when he left you?—To Meath or Westmeath.

[Not cross-examined.]

Joseph Blood sworn.—Examined by Mr. *Mac Nally*.

You have a situation at the castle?—I have.
Was the prisoner recommended to you?—He was.

By whom?—By Mr. Courtney's clerk.

Do you know his general character?—I cannot say. I never heard any thing as to his affection for the government. I understood he was honest.

[Not cross-examined.]

Joseph Haughton, esq. sworn.—Examined by Mr. *Mac Nally*.

Do you know the prisoner?—I do.
How long?—Several years; I cannot say what length of time; he was born in the county where my father lives.

What was his general character, particularly as to his being peaceable, or otherwise?—As I have lived mostly in Dublin, I cannot say much; but in 1798, when the rebels went to attack Clonard, where my father was,

Doran the prisoner was then servant to Mr. Nangle, and escaped out of a window in the house, and never stopped till he got across a bog to alarm my father and mother; my father happened to be at Clonard, as I said, but Doran told my mother, and gave her the first information of the approach of the rebels, and he got a conveyance for her, and the rest of the family to Mullingar; my father gave a certificate of this, and if it was necessary, I was to prove his hand writing; the prisoner's brother lives with my father, as he has an high opinion of him; he is a sober and well conducted man.

Court.—Do you entertain the same opinion of the prisoner?—I have no reason to form opinion, only from what I have stated; I had nothing to the contrary, until the prisoner charged with this business.

Mr. *Mac Nally* stated to the Court that the prisoner had no other witness to examine; but that Mrs. Couzens had been sent for; and in case of her arrival, he hoped the Court would permit her to be examined.

Lord *Norbury*.—By all means; we will wait any reasonable time for her.

[After waiting some time, Mrs. Couzens came into court, and was examined.]

Mrs. *Barbara Couzens* sworn.—Examined by Mr. *Mac Nally*.

You are the wife of Mr. Couzens, the attorney?—I am.

Do you remember the 23rd of July last?—I do.

Pray, madam, do you remember the trifling circumstance of burying a bird?—I do, sir.

It was on that day?—It was.

You were present at its being put into the grave?—I heard it was; but was not present.

Do you know Doran?—I do, my servant woman.

I mean her husband, the prisoner; do you know him?—I do.

Was he there that night?—He was; he put the bird into his hand and made him bury it.

Did you see him after, in the course of the evening?—No, I did not; I was up with some company.

What are their names?—Mrs. Silve is one.

She is in an ill state of health?—Yes.

There was a young lady also there?—Yes.

Did the prisoner stay to bury the bird?—I am sure he did; they had not done their work in the kitchen.

Was it usual with the prisoner to drink with his wife at your house?—It was.

Mrs. *Barbara Couzens* cross-examined by Mr. *Solicitor General*.

Pray, madam, how was the prisoner dressed that evening?—In a brown coat.

Do you recollect any other part of his dress?—I do not.

Had he an apron upon him?—He had not.

Can you safely say, he had not an apron?—I can; I can safely say, I never saw an apron upon him, when he came to my house.

William Harrow called again.—Examined by the Court.

When you saw the people with pikes, you were standing in the alley?—Yes.

You did not go from your father's door that evening?—I did not.

You did not see a great number of persons at the end of the alley?—No.

Who drew your examinations?—Mr. Kemmis.

Is that your name and hand writing? [Showing the witness his information.]—It is.

Did you read your examination before you swore it?—No, major Sirt read them.

Mr. Solicitor General.—My lords, under the circumstances of this case, we think it our duty to say, that there appears that kind of doubt which prevents us from pressing the case farther against the prisoner.—We think the jury may with propriety discharge their duty by acquitting the prisoner, rather than by convicting him.

Lord Norbury.—I think it right also to say, that the officers of the crown directed the attention of the Court to a comparison of the information sworn by the boy with his evi-

dence upon the table.—By the former, he does say, that he saw several persons to the number of three hundred marching up New-street, which is not consistent with what he has sworn now.—Possibly this may arise from mistake at the time he swore the informations, or at the present. But, under these circumstances, and the identity of the prisoner depending upon the single testimony of this boy, and the officers of the Crown having candidly given up the case, we think the jury should acquit the prisoner.

Verdict.—NOT GUILTY.

The *Counsel for the Crown* said, it was but right to observe, that nothing had appeared to impeach the moral character of the boy.

Mr. Mac Nally said, that the Court and the counsel for the Crown would do him the justice to recollect, that he did not attack the boy's credit upon any other ground than that of mistake.

The *Jury* expressed their satisfaction of the pure intention of the witness; but said, they thought it possible he might be mistaken as to the prisoner's person.

Mr. Mac Nally then said, the prisoner was willing to take the oath of allegiance.

But the Court did not require it, and he was instantly discharged.

663. Trial of THOMAS DONNELLY, NICHOLAS FARRELL (*alias* NICHOLAS TYRRELL), LAURENCE BEGLEY (*alias* LAURENCE BAYLY), and MICHAEL KELLY, for High Treason; before the Court holden under a Special Commission at Dublin on Saturday September the 10th: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.

Saturday, Sept. 10th,† 1803.

Judges present:—Lord Norbury, Mr. Justice Finucane, Mr. Baron George, and Mr. Baron Daly.

Thomas Donnelly, Nicholas Farrell, Laurence Begley, and Michael Kelly, were put to the bar.

They had been arraigned on Saturday, the 3rd of September upon the following indictment:

County of Dub- } THE jurors of our lord
lin to wit. } the king upon their oath
present that Thomas Donnelly late of Tho-

* From the Report of William Ridgeway, esq. Barrister at Law.

† The preliminary proceedings will be found at the commencement of Kearney's trial.

mas-street in the city of Dublin and in the county of the city of Dublin yeoman Nicholas Farrell late of Thomas-street aforesaid in the city of Dublin and in the county of the city of Dublin yeoman otherwise called Nicholas Tyrrell Laurence Begley late of Thomas-street aforesaid in the city of Dublin and in the county of the city of Dublin yeoman otherwise called Laurence Bayly, Michael Kelly late of Thomas-street in the city of Dublin and in the county of the city of Dublin yeoman subjects of our said lord the now king not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil as false traitors against our said lord the now king their supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the

king should bear wholly withdrawing and contriving and intending the peace and common tranquillity of this kingdom to disquiet molest and disturb and the government and constitution of this realm to change subvert and alter and our said lord the king from the royal state title honour power imperial crown and government of this kingdom to depose and deprive and our said lord the present king to death and final destruction to bring and put they the said Thomas Donnelly Nicholas Farrell otherwise called Nicholas Tyrrell Laurence Begley otherwise called Laurence Bayly and Michael Kelly on the twenty-third day of July in the forty-third year of the reign of our said lord the king at New-street aforesaid in the county of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there their supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death And that to fulfil perfect and bring to effect their most evil and wicked treason and treasonable imaginations and compassing aforesaid they the said Thomas Donnelly Nicholas Farrell otherwise called Nicholas Tyrrell Laurence Begley otherwise called Laurence Bayly and Michael Kelly as such false traitors as aforesaid on the said twenty-third day of July in the forty-third year of the reign of our said lord the king at New-street aforesaid in the county of Dublin aforesaid with force and arms falsely maliciously and traitorously did conspire confederate and agree together and to and with each other and to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this kingdom

And afterwards to wit on the said twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at New-street aforesaid in the county of Dublin aforesaid the said Thomas Donnelly Nicholas Farrell otherwise called Nicholas Tyrrell Laurence Begley otherwise called Laurence Bayly and Michael Kelly as such false traitors as aforesaid in further prosecution of their said treason and treasonable purposes aforesaid did arm themselves with and did bear and carry certain weapons called pikes with intent to associate themselves with divers other false traitors armed with guns swords and pikes whose names are to the said jurors unknown for the purpose of raising levying and making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king within this kingdom

And that afterwards to wit on the said twenty-third day of July in the said forty-

third year of the reign of our said lord the king with force and arms at New-street aforesaid in the county of Dublin aforesaid the said Thomas Donnelly Nicholas Farrell otherwise called Nicholas Tyrrell Laurence Begley otherwise called Laurence Bayly and Michael Kelly as such false traitors as aforesaid in further prosecution of their treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered together against our said lord the king did levy ordain and make private war against our said lord the king against the duty of the allegiance of them the said Thomas Donnelly Nicholas Farrell otherwise called Nicholas Tyrrell Laurence Begley otherwise called Laurence Bayly and Michael Kelly against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

And the said jurors of our said lord the king upon their oath do further present to the said Thomas Donnelly Nicholas Farrell otherwise called Nicholas Tyrrell Laurence Begley otherwise called Laurence Bayly and Michael Kelly being subjects of our said lord the now king and not having the fear of God in their heart nor weighing the duty of their allegiance but being moved and seduced in the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards his said sovereign lord the king and wickedly is visiting and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at New-street in the county of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom and in order to fulfil and bring to effect the said treasonous compassing imaginations and intentions last mentioned of them the said Thomas Donnelly Nicholas Farrell otherwise called Nicholas Tyrrell Laurence Begley and Michael Kelly they the said Thomas Donnelly Nicholas Farrell otherwise called Nicholas Tyrrell Laurence Begley otherwise called Laurence Bayly and Michael Kelly they the said Thomas Donnelly Nicholas Farrell otherwise called Nicholas Tyrrell Laurence Begley otherwise called Laurence Bayly and Michael Kelly afterwards to wit on the twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at New-street aforesaid in the county of Dublin aforesaid with a great number

tude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the new king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king their supreme and undoubted lord contrary to the duty of the allegiance of them the said Thomas Donnelly Nicholas Farrell otherwise called Nicholas Tyrrell Laurence Begley otherwise called Laurence Bayly and Michael Kelly against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

The prisoners severally pleaded Not-Guilty; and being asked whether they were ready for trial, answered, that they would be ready on Monday the 5th.

On Friday, the 9th of September, they were brought up for trial, when Michael Kelly said he could not be ready for his trial till the next day, and thereupon the attorney-general consented that their trials should stand over till the next day.

Accordingly, they were this day, Saturday, the 10th of September, put to the bar again, said they were ready for trial, and consented to join in their challenges.

The following jury was then sworn, after two persons were set by on the part of the crown—one challenged by the prisoners for want of freehold, and three were challenged peremptorily.

William Pemberton,	Arthur Keene,
George Coppaidge,	Charles Mulvany,
Robert Walker,	Bennet Dugdale,
James Coppaidge,	William Davis,
Daniel Sullivan,	Anthony Davis,
Thomas Macready,	Richard Browne.

The prisoners were given in charge.

The Counsel and Agents for the Crown and for the prisoners were the same as on the preceding trial.

Mr. O'Grady opened the Indictment.

Mr. Attorney General.—My Lords, and Gentlemen of the Jury;—It appears from the indictment against the prisoners, which has been read by the clerk of the crown, that they stand charged with the crime of high treason. Gentlemen, that charge is grounded upon two distinct species of treason, one for compassing and imagining the death of the king, and the other for levying war against him. This crime is constituted by the traitorous imagination of the heart, the moment it conceives the design;—in the language of the law, the moment a man compasses and imagines the death of the king (which means any altera-

tion by force of the laws, constitution, and government of the country), he is guilty of the crime of high treason. But it requires that the traitorous imagination of the heart should be made known by some visible and outward act, which will demonstrate to any body the intention of the man. This is called in the law an overt act, and is in itself but evidence of the crime of treason, the greatest which a subject can commit, whatever the nature of the overt acts may be, or however they may differ in their degree of atrocity: for the nature of the evidence alters not the guilt of the party accused; for instance, in this indictment, it is attributed to the prisoners, that they armed themselves with pikes for the purpose of associating with other false traitors to alter by force the law and government of the kingdom. The death of the king must be supposed necessarily to result from the successful execution of such a design; therefore that single act, being an overt act of this species of treason, is sufficient in itself, if it be clearly proved to have been done with an intent to alter the government and constitution by force, is as direct evidence of the crime of treason, as if we had specifically laid, as an overt act, the death of any persons who were unfortunately murdered during the insurrection.

You, gentlemen, know that no atrocities were committed in your county; they were all confined to the city, but the moment we attach this crime upon any man in the county, that he armed himself with a pike, the same weapon that was used in the city, and that he marched out at the same hour in which the disturbances began, you are to consider whether he did so for the purpose of joining other false traitors against the king and government; and you are to collect from all the circumstances, whether he promoted the general design. If you believe that the person accused took up the pike with that intention, every act which was done in Thomas-street will be evidence against him, although he did not individually take any part in the transactions. When a furious and lawless mob collect together for any barbarous purpose, it falls to the lot of few to be actors in it; but every person is guilty in the eye of the law, if he be voluntarily present, aiding and supporting those who commit the fact; for if they were not so present, the few who are actually employed would not pursue their schemes; they derive aid and encouragement from the numbers who attend.

Gentlemen, I call your attention to these facts, because you will have nothing to do, but first to inquire whether there existed in the city a treasonable insurrection and rebellion; and your next object will be, to inquire how far the prisoners at the bar participated in it. It is not necessary that they should be guilty of any one atrocity committed on that evening; and even if you should be of opinion that they did not originally know the

design, yet, if you should be of opinion that these persons afterwards engaged in the traitorous conspiracy, and that they armed themselves with pikes, and appeared in the open streets aiding those who were prosecuting the rebellion, I beg leave to say, under the direction of the Court, that it will be your bounden duty to convict them. If, on the other hand, we shall not identify them, or you shall have any doubt on the case as to their intention or conduct, you will acquit them; and I trust that we shall not this day be amused with those attempts at *alibies* which have taken up so much time, because in this case the prisoners were taken at the very hour when the rebellion was raging. I shall not anticipate any farther what their defence may be; if they have any, you will give them the full benefit of it; you will attend to the evidence which they may adduce, and not suffer your judgments to be warped by any thing which has happened, nor by the convictions which have hitherto taken place; you will do your duty to your king and country by pronouncing such verdict as may be wholesome to the public, and satisfactory to yourselves.

Edward Wilson, esq. sworn.—Examined by *Mr. Plunkett*.

After giving the same account of the transactions in Thomas-street as upon former trials, the witness proceeded:

I called upon Mr. Bell, who had a guard, and we placed sentries, and patrolled down the road towards Harold's-cross.

Was that in the county?—Yes.

What time was this?—About ten o'clock.

Were any prisoners brought to you?—In a short time the watchmen brought me four men.

Look at the prisoners?—These are the very four men: they were brought in custody and four pikes also. I ordered them into the watchhouse, and I went in shortly after, and finding they were countrymen, I said to them, "You are countrymen; you are from Naas;" one of them said "Yes." I am not sure which of them it was.

Was it in the hearing of the others?—It was.

Court.—Did that one say, he was from Naas, or did he answer for all?—He answered for all; and I took it as the answer for them all.

Mr. Plunkett.—Proceed to state what passed?—I asked them separately, where they got the pikes. I asked the little-fellow, Farrell, first; he said he got his pike in Thomas-street; Bayly also said he got his there; and Donnelly said he got his pike in Thomas-street; but Kelly said he had no pike at all.

Then Kelly was the only one who denied having a pike?—He was.

Do you recollect who the watchmen were?—John Monk was one; and Walsh, and Dove, and Leeson; there were some others.

At what time were the prisoners brought

in custody?—Sometime after ten; I suppose twenty minutes.

Court.—Where was it?—In New-street.

Is that in the county of Dublin?—It is, my lord.

Mr. Plunkett.—How long was this after the firing upon your party in Dirty-lane?—It might be an hour, or an hour and ten minutes after.

Had you passed through New-street before that time?—I came into New-street through Black-pits, by Malpas-street.

Did you see any body of people assembled there?—No.

Do you know whether any outrages were committed in New-street before that?—I know that some of the watchmen were taken, and had made their escape.

Court.—Were you present?—No, my lord.

Court.—Then that is not evidence.

Mr. Plunkett.—What happened after the prisoners were taken?—I charged them with having pikes, and I remained on duty and took others.

But after the prisoners were taken, were any outrages committed?—It was a scene of warfare almost the whole night; we were firing shots and taking prisoners, but I do not charge any with having pikes but the persons.

Did they make any excuse to you for coming into town?—Not on that night; but they did in the *Prévôt* afterwards.

What was it?—Donnelly and Farrell as they came in to buy waistcoats and stockings they said they worked with Mr. Clarke in Palmerstown, and were met by a body of men in Thomas-street, and pikes were put in their hands.

Did Begley give any account?—He did a very long one; that he was sworn in a long time before, and gave a long story of himself.

Jury.—What do you mean by his long sworn?—Sworn to destroy the constitution.

Mr. Mac Nally.—Had you held out any threat or promise to induce these acknowledgments?—There was not by me, or in my presence: there certainly was a magistrate in the place before I got there.

Who was the magistrate?—Mr. Bell.

Did he make any promise?—Not in my presence.

Mr. Plunkett.—Proceed, and tell what passed?—Begley told me he was an inmate in Queen-street at the Sun inn.

Court.—Have you any reason to think there was any promise or inducement held out to Mr. Bell?—Mr. Bell told me not.

Were they in terror?—They certainly were in terror, for they fell upon their knees, and begged that they might not be hanged immediately.

Mr. Plunkett.—Was there any circumstance to excite their terror, save their being prisoners, and charged with such a crime?—No thing more, but a consciousness of the crime being caught in the fact.

Lord Norbury.—I look upon the law as settled. If the terror, or other impression upon the prisoner's mind, be created by the person seeking the discovery, or holding out the inducement, it is not competent to inquire into the confession. But if a disclosure be made from a sense of the party's own guilt, it is not controverted, that the evidence is admissible.

Mr. Mac Nally.—My lord, my examination went to that.

Mr. Justice Finucane.—There is one question as to the admissibility of the evidence, and another as to the weight it may have.

Witness.—There is one circumstance I should mention, as it shows they were not ill treated. I saw them drinking, and was apprehensive they had got spirits, but, upon examining, found it was milk. I asked them where they got it, and was told it was my servant girl who gave it them. I said to them, "You would have piked me some time ago, and my girl gives you milk."

Mr. Plunkett.—You have mentioned, that Begley said he was an hostler in Queen-street. Do you know the situation of Thomas street, Queen-street, and New-street?—I do.

Would New-street be the direction from Thomas-street to Queen's-street?—Not at all; it is quite the opposite way. Begley told me he knew in the morning that the rising was to take place that night, and that he was to join it.

Court.—You mentioned that one of the prisoners said he came from Naas; and you took that to be the answer of them all; yet two of them said, they were workmen to Mr. Clarke?—One of them said "Yes" to my question, "Whether they were not from Naas?" I rather think it was Kelly.

Mr. Plunkett.—What more did the hostler say?—He said he knew of the rising, and that there were several messengers back and forward: he mentioned one man who lived in Thomas-street, and another in High-street.

A Juror.—Did he mention that he was to join?—He said, he was sworn to join it.

Did it appear at what time he was sworn?—A considerable time.

Court.—Was it a year?—I rather think not. He mentioned the man who swore him; and also the signal by which they would know one another.

A Juror.—Do you think the prisoner would have committed himself to you in that way, if he did not expect favour from it?—I rather think he might have expected favour, for I did not think he was such a fool.

Court.—Did you offer or promise him any favour?—No.

Did Mr. Bell?—No, it was not necessary, being caught in the fact, to ask them any more questions, as I thought it might appear to be entrapping them.

Mr. Plunkett.—What was the signal which was told you?—First, to ask, "are you steady?" the answer was, "I am determined."

The two other prisoners said, they lived at Mr. Clarke's; was New-street the way to Palmerstown from Thomas-street?—By no means; it is quite opposite.

Court.—These two said they were from Palmerstown; that militates against what you said, that they said they were from Naas?—When I asked them, were they from Naas? one, who I think was Kelly, answered "Yes."

Jury.—Did you consider that as the answer of them all?—At the time I did; but afterwards I found from each of them where they came from.

Mr. Plunkett.—What did Kelly say?—He denied having a pike.

Did he say where he came from?—He said from Naas.

Did he say any thing more?—No.

Edward Wilson, esq. cross-examined by
Mr. Mac Nally.

How many watchmen brought these men to you?—Eight or ten.

Were there more than seven or eight?—Yes.

When they were brought to you had they pikes?—The watchmen had the prisoners by one hand, and the pikes in the other.

All you know is, that these men at the bar were brought in prisoners?—They were brought to me on the road, and the watchmen said, "Here are men taken with pikes, with pikes in their hands." One of the men, Kelly, said "He had no pike." I asked them no questions on the road, till they were put into the watchhouse; but there were four pikes brought with them.

Mr. Bell is a magistrate of the county?—He is.

He had private conversations with some of these men before you went in?—He was taking down a confession in writing from Begley when I went in.

Court.—We cannot receive any evidence of that. Therefore what was said by Begley must be thrown aside.

Mr. Mac Nally.—Do you say that Kelly was brought in with the other prisoners?—They were brought in almost instantly, I think together; they were brought in by the same party.

Call to your recollection, whether it was not some time after three men were brought in, that Kelly was brought in?—No.

What space of time was there between the bringing in of the four prisoners?—Not half a moment.

But there was some space of time?—I think not even what I mentioned, because I think they were brought together.

Jury.—You mentioned, that New-street was not the road from Thomas-street to Palmerstown and Naas; but supposing them to have been compelled to take pikes, was not Thomas-street their direct road from Palmerstown and Naas?—That would depend upon the part of the town they were going to.

Mr. Mac Nally.—You heard that some respectable people were compelled to take pikes?—I heard one gentleman say so upon the table.

Jury.—When these four men were brought to you, did they appear to be brought in as separate persons, or as one party?—As one party.

Lieutenant *Coulman* sworn and examined.

The witness gave the same account of the dépôt as upon the former trials. [*Vide Kearney's case*, p. 719].

Serjeant *Thomas Rice* sworn and examined.

This witness proved the proclamation as before. [*Vide same case*, p. 722.]

Lieutenant *Douglas* sworn and examined.

This witness gave the same evidence as before. [*Vide same case*, p. 733.]

He said, that the barrack upon the Coombe is in the county of Dublin; that one half of the street there is in the county, and the other half in the city; that one half of the front division of his men was in the county, and the remaining half in the city.

John Monk sworn.—Examined by Mr. *Mayne*.

Are you in any employment?—One of the watchmen.

Of what division?—Newmarket on the Coombe.

Were you upon duty on the night of the 33rd of July?—I was.

Was there any peace officer with you?—There was a constable.

Do you know Mr. Wilson?—I do; he is chief peace officer.

How many of you composed the guard that night?—There were nine upon the patrol.

Had you any arms?—We had our watchmen's poles.

What patrol did you go?—From the watchhouse down towards the Poddle and back again.

At what time was this?—We began a little after nine, and continued from that till morning.

You were not there before that time?—Mr. Wilson brought me out, and I was not at New-street before nine.

Who sent you out upon the patrol to New-street?—Mr. Wilson.

Look at the bar, and see if you know the prisoners?—The man in brown is the man I laid hold of.

What is his name?—Kelly.

Court.—You laid hold of him in the course of the patrol?—Yes.

Mr. *Mayne*.—Where was it you laid hold of him?—It was not far up; it was near the Long-lane, facing down towards the Poddle.

Court.—How far was it from the Poddle?—I cannot rightly judge.

Mr. *Mayne*.—Is it a good length?—I cannot tell the distance.

The Poddle was farther of?—It was.

Is the place where you took Kelly in the county of Dublin?—It is, I believe.

Had Kelly any thing with him at the time?—He had, sir.

What?—He had a pike.

How soon after your going out upon the patrol, which you say was after nine, did you find the prisoner?—Between ten and eleven.

Can you form a judgment more particularly, whether it was nearer to ten than eleven?—I cannot say how much it was between, or how much it wanted of eleven.

Which way was the prisoner's face when you took him?—His face was for the city.

Did you come behind him?—No; we were going up, and met him coming into town.

Court.—Was he faced towards the Coombe?—He was.

Mr. *Mayne*.—Was it dark at that time?—It was.

Was it very dark?—It was by the whiteness of the poles we discovered him; he was at the one side of the street and we were at the other.

Do you mean the whiteness of the pike handles?—Yes.

Was the prisoner alone? or was he with others?—He was with others.

Do you know how many were with him?—When I laid hold of him there was another close with him, and had a pike, and he dropped it and jumped into the middle of the street, and was seized immediately.

By the rest of the patrol?—Yes, sir.

Do you know who that other was?—I do not say; there were four of them altogether.

Was the man who was taken in the middle of the street one of the four?—He was; there were four taken in all, but I have nothing to say to any of them but the one I laid hold of.

Were they all four taken together?—They were.

At the same place?—Yes.

Court.—Had the rest of them pikes?—They had; there were four pikes.

Mr. *Mayne*.—To what place were they brought?—To the watchhouse, where Mr. Wilson had the command.

Did you take them immediately there?—We did.

Were they going fast or slow, when you met them?—They were going pretty smart.

John Monk cross-examined by Mr. *Mac Nally*.

Did the man make any resistance when you laid hold of him?—No, not at all.

He immediately submitted?—He did; as soon as I laid hold of him, he dropped the pike.

He did not call out for assistance?—He did not.

He was perfectly quiet?—He was. Did he not seem well pleased to get into your custody?—I cannot say for that.

Was not his conduct such as that of a man

who was forced?—He might be forced for aught I know; the man said he was forced, when I asked him how he came by it.

Jury.—Are you certain he had a pike when you seized him?—He had, and dropped it and stood still.

In what position had he the pike?—Trailing, not touching the ground.

Were there any other persons there but the four?—No, sir; when I took this man, I saw the second, and the four were taken.

Mr. Mac Nally.—Did you not hear there were many pikemen out that night?—I heard the firing at the Coombe a little before that.

If he had made a noise, would not others have come to his assistance?—I do not know: but with the weapons they had, if they worked their passage, they might beat us nine.

Court.—You were nine in number, and had poles, and there were only four of them?—But our poles were not half the length of theirs; if they met us in the middle of the street; but what was against them, we came close upon them, and against a wall, so that they could not use their pikes.

Jury.—You say they were coming into town?—They were.

Had you any reason to think they were so high as the Circular-road?—I think not; because Mr. Bell's guards were across the street there.

There are many other passages into the street?—There are.

John Leeson sworn.—Examined by Mr. Attorney General.

What are you?—I was a weaver reared.

What are you now?—A watchman at present.

You are one of the nine, whom the last witness expressed an apprehension might be beat by four men?—Yes.

[This witness appeared to be a very feeble old man.]

Pray give me an account of what happened?

—Mr. Wilson sent me out that night, with the rest of the party, to patrol from New-street; and at half past ten we met four of these men, and brought them in prisoners.

Had you any assistance in taking your man?—I gave him up to the guard, and they put him into the room.

John Leeson cross-examined by Mr. Mac Nally.

They went quietly with you?—They did.

Jury.—Should you know the man you took?—To the best of my knowledge, I should.

Point him out?—To the best of my knowledge, that is the man [Farrell].

Had he a pike?—He had not; there was a pike near him upon the ground, but I did not see him with a pike in his hand.

Mr. Attorney General.—Did you identify him upon the Monday after, in the Prevot?—

I did, but since that time he went out of my mind; I never saw him before that night, or after Monday till now.

Did you identify him positively in the Prevot?—Not positively; I said, to the best of my knowledge he was the man.

Are you positive, that the man you took, you delivered up to Mr. Wilson's guard?—That is the man, to the best of my knowledge.

But are you positive, that the man you took was delivered by you to the guard?—I am.

Where was the pike?—On the ground, near him.

What did you say to him?—I asked him about the pike; he said, he met a crowd in Thomas-street and was obliged to go with them, through fear of his life.

Did he say any thing about being obliged to take a pike?—I cannot recollect.

Did your party bring in more than four prisoners that night?—They did not.

How many pikes did you bring in?—Four pikes.

Walter Byrne sworn.—Examined by Mr. Plunkett.

Were you of the party sent to patrol by Mr. Wilson on the night of the 23rd of July?—I was.

You are a watchman?—I am.

Was Leeson along with you that night?—He was.

And William Dove?—Yes.

And Monk?—Yes, and five more.

Did you seize any prisoners?—We did.

How many?—Four.

Were they together, or in separate parties?—I believe they were together; for in the bustle, we made what shift we could to seize them.

As one party?—Yes.

At what hour was it?—Between ten and eleven.

Had they any arms?—They had four pikes.

Do you mean to say that each of the four men had a pike?—They brought in four pikes.

But are you certain they each had a pike?—I can be certain for the man I brought in myself.

Point him out?—That is he, Begley.

Are you positive that man had a pike when you took him?—He had.

Court.—Can you speak as to the others?—I can be certain only for the man I took.

Mr. Plunkett.—In what manner had he his pike?—He had it slung in his hand.

[The witness was desired to describe the manner, by holding a stick in the same way; which he did, by holding it in a trailing position.]

Did you deliver that man a prisoner to any person?—I brought him off, and left him at the watch-house door.

In whose custody?—I left him in the watch-house.

Who was there?—Mr. Wilson was there.

Were the others brought in at the same time?—They were, for I was the last.

How many pikes were brought in?—Four.

Were these pikes got by you and the party at the same time?—They were.

At the time you took the four prisoners, and got the four pikes, were there any other persons near them?—We did not see any more than four.

Look at the man at the bar of the name of Farrell?—I have nothing to say to him.

He was not taken by you?—No.

Walter Byrne cross-examined by Mr. *Mac Nally*.

Were any of the pikes taken from the ground?—They might by some others of the party. I only took care of the man I took myself.

It was very dark?—It was dark.

You could not see any length upon the road, to see whether there were any other pikemen or not?—I could not; I took care of the man I seized, and nothing else, till I left him at the watchhouse.

But the man told you, when he was seized, that he was forced to join the mob to save his life?—No such thing passed.

Did you not hear some such thing?—I cannot say. It might be said by some others, but I did not hear it.

You brought these men quietly to the watch-house, without interruption?—We did.

Jury.—Do you think you came upon the prisoners before they perceived your approaching?—I do not doubt but we did.

Mr. Justice *Finucane*.—But you do not know?—No, my lord.

Mr. Justice *Finucane*.—Then it is not evidence.

William Dove sworn.—Examined by Mr. *Mayne*.

You were a watchman upon the 23rd of July?—I was.

Were you patrolling New-street that night?—I was.

How many were in your party?—Nine, to the best of my opinion.

You were sent by Mr. Wilson?—Yes.

Did you meet any persons with pikes?—We did.

How many?—I saw four with pikes.

Were the four seized?—I am sure they were; for there were four brought to the watch house, and four pikes; but I seized one.

Look and try if you see him?—That is he.

What is his name?—He went by the name of Thomas Donnelly.

Was he one of the four?—He was.

Had he a pike at the time?—He had.

Mention how he was carrying it, when you seized him?—When I saw him first, he was trailing it.

Not touching the ground?—No; he turned about, and I presented a piece at him, as I said, I would blow his brains out, and he made no resistance.

Court.—What piece did you present?

Mr. *Mayne*.—A carbine and bayonet.

How came you to have a carbine? Were you a constable?—No, but I had been left a reserve, as I understood something of a military line.

Did he say any thing to you?—Yes.

What was it?—He begged, as a request that I would not ill use him. I said, "I am afraid, my hearty, while in my custody, you do not resist." And he made no resistance. I desired my comrades to take the man from him; which they did.

Who took it?—I do not recollect.

What did you with the prisoner?—I gave him and the three others to the watch-house. Was Mr. Wilson there?—He was.

What hour was this?—Between ten and eleven.

[Not cross-examined.]

John Maguire sworn.—Examined by Mr. *Attorney General*.

In what situation were you upon the 23rd of July?—I was sent by Mr. Wilson to patrol along with a party of men.

How many were there?—Nine.

You are a watchman?—Yes.

Were you in New-street that night in the course of the patrol?—I was.

Do you recollect any thing particular to have happened?—I saw four men with pikes in their hands, and I alarmed the guard.

What guard?—Those men who were with me at the time.

Can you tell me what became of the four men and their pikes?—We took them, and brought them to the watch-house, and gave them to the guard there, and left them in the watch-house.

Who commanded there?—Mr. Wilson.

How near were these four men to each other, when you first saw them?—About a yard or so between each of them.

Can you swear positively, that when you first saw these four men, you saw pikes in the hands of each of them?—I can.

Can you say positively?—I can because I was the first man who saw them and alarmed the guard.

Can you be equally positive, that the four men you took, were the same four men who gave up to Mr. Wilson?—I am positive; there were no other four men taken.

Had you any particular hand yourself in taking any of them?—When I alarmed the guard, I cried out, "Are you all blind?" and Lambe, the constable, ran towards them, and I went up and seized a man by the breast, and he dropped a pike, and I stooped for it.

Should you know any of them?—I should know one; because I knew him before, and knew him the next morning.

Which is he?—That is the man [Pointing to Begley.]

[Not cross-examined.]

Mr. Attorney General.—My lords, I think it right to say, that I have the informations of the man taken in writing; but upon inquiry from the magistrate, I find he did say something to the man of his telling the truth, and though that would not in strictness be an objection, yet it might imply a hope, and therefore I do not wish to give evidence of them: and I wish the jury should throw out of their recollection all evidence respecting the declarations of that prisoner, and your lordships will please to recollect, that I did not introduce any thing of it in my statement.

Jury.—Are you positive, that these four men are the same men who were taken that night?

Maguire.—I am; I met them that night.

[Extracts from the Proclamation were then read as in the former cases. *Vide Kearney's case, p. 723.*]

[Case closed on behalf of the crown.]

DEFENCE.

Mr. Mac Nally.—My Lords, and Gentlemen of the Jury; I am counsel for the four men at the bar; and if it had not clearly appeared to me, from their briefs, that no danger could attach to them, from joining in their challenges, I would not have suffered all their cases to come before one jury, by one trial, but would have advised them to have severed their challenges, a privilege which the law allows them, and which would have entitled each of them to set aside twenty jurors without showing cause, or to be tried individually. Gentlemen, you will find no great difficulty in discriminating the case of any one of those prisoners from that of any other; you must perceive that the evidence against each, with very little variation, is the evidence against all, and their defences appear to me, marked with features of similarity equally strong. From the humane and honourable manner in which the prosecutions under the present commission have been conducted, I feel that I have been perfectly right in permitting the cases of the prisoners at the bar to come before you all together. In this case, as in all those already tried, it must be admitted that no measure has been attempted to impede the defence, or prevent the prisoners from any advantage, that their situation could admit of—and it would have been ungenerous indeed in me, who with those I have been concerned for, have experienced the candid and liberal conduct of the crown bar, and the attention and great indulgence of the learned judges who have presided on the bench, to have occupied four days, in the investigation of facts so simple and so plain, so connected, and so easily to be understood, as those which you have heard given in evidence on this trial,

and those which I have to lay before you in the defence.

You, gentlemen of the jury, are to judge, whether I am justifiable in asserting, that, from what has appeared in evidence, there is no conclusive proof to show that the prisoners or any of them, were implicated in the rebellion of July last; and if you cannot conclude beyond all doubt that they were implicated, my lords will inform you, your duty is to acquit. I admit you possess incontrovertible proof that a rebellious insurrection took place on the 23rd day of July last; an insurrection too, founded on a conspiracy to overturn the government of Ireland: but unless you are satisfied beyond all question that the prisoners were conspirators in that insurrection, with the intent charged upon them by the indictment, that is, an intent to subvert the existing government, and to bring the king to death, you are bound by the imperative principles of justice—you are bound, by the positive law of the land—you are bound, as I will show you, not only by the spirit, but by the very letter of the statute, on the authority of which the prisoners are now trying—to say, they are innocent of the charge, to deliver them by a verdict of not guilty.

They, it is sworn, were found armed, that is not proof of treason; they were found together armed, that is not proof of treason;—those facts, simply taken, would only amount to evidence of an unlawful assembly; for, unless something was done, it would not even constitute a riot. Then, what is the question for you to try? It is this, whether they were voluntary actors. I admit the denomination of the arms found upon the prisoners must convey some suspicion of other intentions, stronger than if they had been instruments of a more common kind; but, gentlemen, you will recollect, there is no proof of their having used those arms any where, or on any occasion, in an hostile manner; there is no proof of their having been present with, or aiding, abetting, or encouraging the insurgents.

Gentlemen, I have mentioned, and I will now state to you literally the act of parliament on which the prisoners are indicted, and on the legal construction of which, you, in my humble opinion, are to form your verdict. It is intitled the "Statute of Treasons," and it was enacted so early as in the 25th year of the reign of king Edward the third; and its provisions are the strongest instances that can be given of the early and tenacious regard with which the legislature of England protected the life of the subject, from arbitrary constructions and newly manufactured treasons.

I will faithfully state the words of the statute, so far as it has relation to the case before you. It first recites, "Whereas divers opinions have been before this time, in what case treason shall be said, and in what not; the king, at the request of the lords and the commons, has made a declaration in the manner as hereafter followeth." It then describes the

offence in the technical language of the times, that is to say, "when a man doth compass or imagine the death of our lord the king, of my lady his queen, or of their eldest son and heir; or if a man violate the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, or other where, and thereof be provably attainted of open deed, by people of their condition" (that is their peers on a jury), &c. &c. It is to be understood, that in the cases above rehearsed it ought to be adjudged treason."

Gentlemen, on two species of the above treason, that is, treason in compassing the death of the king, and treason in levying war against his majesty, the four prisoners at the bar stand charged; and you are to try whether they, or any of them, can be provably attainted.

In considering the evidence against the prisoners, and at the same time recollecting the intention of the legislature, you will remember, that in proportion to the weight of the charge, the legislature, as appears by the statute recited, demands a proportionable strength of evidence. You see and you must revere the benignity of this law, which not only defines, in plain and unequivocal language, the offences which constitute high treason; but also enacts, or rather declares (for this statute is declaratory of the more ancient common law), what kind and strength of proof is indispensable to bring a man within the letter of the act. Should I, in my own language, attempt to define that proof, which, as I have said, the statute requires, I should be wasting time; because I have here before me, comments upon record, the comments of those sages of the law whose ancient opinions have long since become unquestionable authorities. Lord Coke, in his third institute (and the learned jurist was never found a friend to prisoners on trial for high treason), after citing the statute of Edward the third *verbatim*, says, "In this branch four things are to be observed; first, the word provably, that is, upon direct manifest proof; not upon conjectural presumptions or inferences, or strains of wit, but upon good and sufficient proof; and herein the adverb (*provably*) provably hath a great force, and signifieth a direct and plain proof, which word, the king, the lords and commons, in parliament, did use, for that the offence was so heinous, and was so heavily and so severely punished, as none other the like; and therefore the offender must be provably attainted, which words are as forcible as upon direct and manifest proof." And then the learned judge adds, "Note, the word is not probably, for then *commune argumentum* might have served, but the word is, provably be attainted."

Gentlemen, you cannot but understand this test, but if it is not perfectly clear to your

minds, I shall be supported by my lords the judges on the bench, that I am right when I urge, that you cannot convict the prisoners: but on manifest proof; that you cannot convict them by inferences, or strains of wit; that would be conviction upon probability; whereas there can be no attainer upon evidence that is not clear, manifest, perspicuous and conclusive. This argument, gentlemen, I direct to you, and to you only—to you who are to find whether the prisoners are or are not guilty. I have stated the proof which the law requires, and this is the proof which a course you, who are the jury to try their guilt or innocence, must be satisfied, has been given in the cause before, consistently with science, you can find them guilty.

Gentlemen, having pointed out to you the great caution of the legislature in protecting the king's subjects, when charged with treason, I will now call your attention to an admonition directed to you from the attorney-general. This admonition made a strong impression on my mind, and I doubt not it you also felt it with equal effect. He told you, that it would be for you to consider the intention with which these men, the prisoners at the bar, had arms:—that is, I presume, whether at the time the prisoners were taken they were going for the purpose of surmounting those arms, or were on their march to or from, the fight. Gentlemen, I will admit the most probably entertain suspicions and doubts on the intention of those men. I admit it is probable they were prepared for fight; but the fact be ever so suspicious, or ever so probable, that will not be sufficient to justify a verdict of guilty; because it would be against the law, as admitted to be rightly stated by lord Coke. It would be a decision from inferences, a conclusion from the strains of wit, a verdict not founded on manifest proof; it would be a verdict on probable proof and doubts; whereas, when a jury doubts, they are bound to acquit.

Another great writer lays down a rule of law, which I shall attempt to apply to the case of the four men on trial. Judge Foster in his discourse upon high treason, says, "The joining with rebels in an act of rebellion, or with enemies in acts of hostility, will make a man a traitor, in the one case, within the clause of levying war, in the other, within the clause of adhering to the king's enemies. But if the be done for fear of death, and while the party is under actual force, and he taketh the first opportunity that offereth to make his escape, this fear and compulsion will excuse him. It is however incumbent on the party, who maketh fear and compulsion his defence, to show to the satisfaction of the Court and jury, that the compulsion continued during all the time he staid with the rebels or enemies."

But the learned writer admits there are cases of necessity, such as the present, when shall plead the culprits excuse. Now what is the excuse here? It is this, that from the

circumstances existing at the time the prisoners were taken, or rather the time when they surrendered, they have no means of proving the compulsion exercised upon them, when arms were put into their hands. This is not like the Scots' rebellions in 1715 or 1745, where the rebels continued in arms a long time, and marched about from place to place; where many were compelled, and where of course many witnesses could be procured to prove the compulsion, and that the party charged took the first opportunity to escape. Here there can be no witnesses to prove that the prisoners at the bar, or any of them, were compelled to take arms and then went off:—terror keeps back those who could give testimony for them, and being all implicated in the same charge, they cannot give evidence for each other. But I say this ought to be their excuse; I say, if they are deprived by the necessity of the case from producing witnesses of their innocence, that is of their being forced to take arms, that should be considered as an excuse from a conclusion of guilt. The rebels did not become active till nine o'clock at night; until then, it must be presumed, they had a watchful eye upon those they had pressed into their service; till then, there could be no opportunity for escape. Now recollect the hour these men surrendered at; and, is it not clear they must have taken the first possible opportunity that offered to desert from the insurgents? You will judge of their motive; I state those facts to show that the defence is honest—that the charge, which depends on the intent of the prisoners, is not indisputably proved, though it may raise probable doubts. Did they not submit to the first persons they met? That is admitted. But then it is objected, that the party to whom they surrendered were more numerous than they, being nine in number; admitted, but were they so active, so strong, or so well armed as the prisoners? They were watchmen.—You saw that shadow of an able-bodied watchman who gave evidence. Look at the prisoners—they are young; they are athletic! Why, gentlemen of the jury, twenty such spectres of watchmen could not compel four such peasants as the prisoners, to surrender, unless their cadaverous appearance struck them motionless with fear. But to be serious; they did submit and surrender their arms voluntarily, and without the least resistance, which is at least a strong presumption, that they did not assume them originally with the intent imputed to them; and that they had taken the first opportunity to fly from, and abandon the insurgents.

Gentlemen, permit me to supplicate your attention to an observation which, I trust, will have weight. I trust that this case, not being like those which have preceded it, the event will be different from most of them. In this case there is no evidence of brutality, of savage ferocity, or of sanguinary deeds; nothing of the atrocity or bloodshed which have

appeared in other cases has been imputed to the prisoners. I do not venture to say, gentlemen, that there is not evidence for your consideration; but I do venture to say, there is an equity in criminal law, which, though confined by justice Foster to the mercy of the Crown, yet, I say, there is no rule which excludes it from the clemency of the jury. Foster says, that "whenever in the case of individuals, the general rule shall be found to border on *summum jus*, the benignity of our law hath provided a proper resource in the benignity of the Crown. I say, the equity of the crown for mercy to individuals, when properly conducted, is founded in natural equity, and in the principles of our constitution. It is nothing more than weighing the merits of each case, all circumstances considered, in the scale of wisdom and sound policy, against the rigour of the law."

But why should not a jury hold those scales of wisdom and sound policy?—Why should they not compare cases of atrocity and murder, which convictions and executions have made notorious, with the present case, which stands free from such charges?—And why should not a jury consider and determine on those rules of natural equity, and those principles of our constitution, and those benign rules of our law, which are mediators between a prisoner and strict constructions? *Summum jus summa injuria*, is a maxim of English jurisprudence; and as no authority under heaven can set aside your verdict if you acquit, it is clear you have a right to acquit, upon the rules of natural equity, and that without interfering with the prerogative of the Crown, which cannot be exercised till after conviction, and a conference with, or at least a report from the judges.

But if I am wrong in this position on the privilege of juries; if I am told that you cannot deviate from strict justice, for that mercy can only flow from the Crown, to which it is a divine attribute, and which in legal phrase is considered its fountain; still I have a claim upon your conscience, depending on this single question, to be put to yourselves, by yourselves, after the learned judge has concluded, and you have retired to deliberate.—The question is, have you a doubt?—If you have, or if the evidence trembles in *equilibrio*, then mercy must fall into the scale, and preponderate in favour of the prisoners. I say, if there be a doubt, not only natural equity, but natural justice gives the prisoners a title, a right to claim your acquittal—a claim which you cannot deny.

Gentlemen, excuse me for pressing thus upon your attention, but consider I am the only counsel those four men have been able to employ; for such is their poverty, they could not retain a second. I mention this, that you may add every assistance, consistent with your duty, to strengthen my weak exertions against the superior powers and influence of the Crown lawyers, and the full artillery

lery of their united abilities, levelled against my clients. But in saying this, I do not mean to insinuate that any undue influence or power has been levelled; for on the contrary, on all occasions, I shall be ready to bear testimony to the candour which has marked the progress of this prosecution, and indeed of each prosecution that has preceded it.

Gentlemen, I have now only to state what evidence the prisoners can adduce. They can give evidence of most excellent characters; and where there is a doubt, and the charge goes to a bad intention, surely a good character is often the best evidence any man can produce. Some matters of law have occurred; if you wish to be advised on those points, my lords will satisfy you. I will not intrude further on your patience. The Court has a full knowledge of the case—they will, in the true spirit of clemency, give the prisoners every advantage and every effect of that oath which his Majesty, of whom they are the representatives, takes at his coronation, that is “to administer justice in mercy”—a principle which is delegated to all who derive authority under the crown; and none are more inclined to give the utmost efficacy to this attribute of the divine power, than the judges who preside on this trial.

Edward Clarke, esq. sworn.—Examined by Mr. Mac Nally.

Do you know the prisoners?—I know Donnelly and Tyrrell.

How long have you known Tyrrell?—Since he was a child.

He lived in your neighbourhood?—He always did.

What is his general character as to the peaceableness of his disposition?—With regard to his general character, he always appeared to me to be a very simple fellow, easily led to good or harm. Otherwise, in general, a well-behaved simpleton.

Was his character during the last rebellion, and down to the time of his being taken up, that of a loyal poor boy?—In the rebellion of 1798, he was a pretty well grown lad; and, at that period, I found it necessary to watch even the lads and boys who were in my employment, and to admonish them to be quiet. [Here the witness was much affected, and shed tears upon seeing the state the prisoners Tyrrell and Donnelly were in; after some minutes he proceeded.] I took uncommon pains with my working people, who were very numerous. I was fortunate enough to keep them quiet, to the astonishment of the then government; and his lordship on the bench did express his surprise, that I could keep such a number of people in good order, at such a period. I felt proud of this; and I did hope, that at this period, I would have the like influence, and when my suspicions of approaching disturbances were excited, I began to make the most serious inquiry among those who were likely to know of it. I found

all in sullen silence, and that no information would be given, as in the former case.

Court.—When was this?—The 21st or 22nd of July last. My people all denied it; they said there was no ground for apprehension, and desired me not to be alarmed. My feelings are now raised to see these unfortunate persons here, and in such danger; and still more so, as on Saturday the 23rd of July I met these very persons, with many others who were bred under me. I feel for them because they did not take my advice. The multitude I met on the road when I was returning from town—

Mr. Mac Nally.—I called you merely to give a character of the men; you will excuse me, Mr. Clarke, for interrupting you, but must beg you will confine yourself to character. What is Donnelly's character?—As to Donnelly, I am not so well acquainted with him as the other; I know he worked for me and I had a good character of him.

Edward Clarke, esq. cross-examined by Attorney-General.

Did you, Mr. Clarke, meet with any accident that night?—I did; I was fired at near Arran Quay, when I was returning from the castle of Dublin, between nine and ten o'clock; it was a very little after nine; I was way-laid at the corner of a lane leading to Smithfield, by three or four men armed with blunderbusses. One of them stepped forward, and cried out, “Where have you been informing?” and fired; my horse had turned obliquely to him, and I received the shot in my shoulder. The blunderbuss, being heavily loaded, burst, and thirteen slugs were lodged in me. My horse galloped off, and they lost two blunderbusses more at me. A ball passed my shoulder, and another hit my hat, as shot struck me across the nose, which hurt very much. I returned to the castle, for information of what happened, and remained there that night.

Had you been to the castle, upon the subject, in the course of that day before you had; and the day before, and the day before that.

Mention the communication which you had with Mr. Marsden upon Saturday?—On Saturday I was confirmed more in my opinion of the certainty of the rising, than I was on Friday; but I had notice of it on Thursday and on that day I gave notice of it at the castle: but upon Friday I was less certain than upon Thursday, but said, I would make every inquiry: On Saturday morning I got more certain and sure, that every thing was more and barbarous would go forward. I came to town immediately; I got two or three expresses on my way, particularly from a Catholic priest, and from a Roman Catholic house in this town, and from a Roman Catholic priest, that there would be a rising. I told Mr. Marsden of this, and begged he would take proper steps to prevent it. He said to me, “you have changed your mind very

suddenly." I said, I had so, but I gave him the reasons of it. He seemed satisfied, and asked me when I would leave town. He intended, I believe, to have me examined by the privy-council. I said, I would wait at my warehouse in town, at Mr. O'Brien's; and he said he would send for me. He did not send, and I went to the castle at four o'clock. On Friday Mr. Marsden had desired me to call the next morning, and as I came into town I observed groupes of men consulting and whispering together about Newtown Clarke and Palmerstown, and avoiding me when they saw me, in the manner they appeared previous to the last rebellion.

Did you ask at the castle for any military aid?—I did.

Was military aid sent accordingly?—There was.

Although you gave notice of your apprehensions on Thursday, you seemed on Friday to think it might be a false alarm?—I did.

Then I collect from you, Mr. Clarke, that any information you gave was received with attention at the castle, and where assistance was required it was granted to you?—Most certainly; I always experienced the greatest attention and civility; and Mr. Marsden always, in my opinion, wished to do every thing in his power to prepare for the event; and I was sorry to see reflections upon him in an English paper; I am satisfied he did not deserve them.

Mr. Attorney General.—My lord, I am glad this opportunity has occurred to refute the slanders which have been published, either by ignorance or malice. Mr. Clarke, you have done yourself great honour, and your country great service.

Lord Norbury.—Mr. Clarke's testimony must be highly satisfactory, as coming from a man so much respected, regarded, and to whom this country owes so great obligation.

Thomas Coogan sworn.—Examined by Mr. Mac Nally.

Where do you live?—In Palmerstown.

In what employment?—In the employment of Mr. Clarke, to conduct part of his business.

Do you know the prisoner Donnelly?—I do.

What is his general character?—I never knew a better character in his circumstances.

I believe he is not very strong in his intellects?—I do not know as to that.

How old is he?—About eighteen or nineteen.

Thomas Coogan cross-examined by Mr. Attorney General.

Do you not believe, that many persons of weak understandings and good characters were engaged in the rebellion of the 23rd of July?—I do believe it.

Thomas Slattery sworn.—Examined by Mr. Mac Nally.

Do you know Tyrrell the prisoner? Yes.

What is his general character?—I believe him to be a sober and honest man.

[Not cross-examined.]

Thomas Plunket sworn.—Examined by Mr. Mac Nally.

Where do you live?—In Naas.

Do you know Kelly?—I do.

How long?—As long as I know any one.

Do you live near him?—I do.

Are you acquainted with his general character and conduct in life?—I am.

Do you consider him as a man deserving the character of a loyal man?—I never heard any thing as to his disloyalty; he was the character of a fair inoffensive man.

Thomas Plunket cross-examined by Mr. Prime Sergeant.

You live in Naas?—Yes.

Did not several persons leave Naas upon the 23rd of July?—There did, several.

And they came up to Dublin, for the purpose of joining in the rebellion?—I cannot tell.

Did not several come from Naas to join in it?—Some was killed as I heard.

Then they must have come for the purpose?—I suppose so.

Now, with regard to these persons, did you ever hear any objection to their characters upon the score of loyalty?—I did not.

Court.—What line of life is Kelly in?—A bricklayer.

Henry Heyden sworn.—Examined by Mr. Mac Nally.

Do you know the prisoner Kelly?—I do.

You live near Naas?—I did.

How long have you known him?—Since he was a boy.

Did you live near him?—Yes.

Do you know his general character?—I do.

Has he the character of a loyal or disloyal man?—That is a thing I know nothing of, only one thing that I heard, he was at home the whole of the last rebellion, when many others went to join the rebels on the hill, he worked at the barriers in the town.

What is his character as to peaceableness?—He is a quiet, simple man.

[Not cross-examined.]

James Mac Nally sworn.—Examined by Mr. Mac Nally.

You are a salesman in Smithfield?—I am.

Do you know the prisoner Bayly?—Yes.

How long?—Eight years.

He is an hostler at the Sun Inn?—He was.

Do you know his general character?—He was a very civil man; I never heard any thing bad of him.

James Mac Nally cross-examined by Mr. Solicitor General.

All you know of him is, that he was a civil hostler?—Yes.

John Ledham sworn.—Examined by Mr. Mac Nally.

Where do you live?—Now in Prussia-street, formerly in Rathcoole.

Do you know Bayly?—Yes.

What is his general character?—I never heard any thing bad of him.

John Ledham cross-examined by Mr. Mayne.

You did not see him in the rebellion?—No.

[Here the case closed on behalf of the prisoners.]

SUMMING UP.

Mr. Justice Finucane.—Gentlemen of the Jury; The prisoners at the bar are indicted of high treason in compassing the death of the king, and making, levying, and raising open rebellion, insurrection and war against him. That insurrection and war was actually carried on upon the 23rd of July last, no doubt can be entertained; but it was a matter necessary that you should be ascertained of, in order to support the indictment. The fact of a rebellion raging is a matter conceded on all hands;—and then the principal fact for you to inquire into is, whether the prisoners at the bar or any of them took any part, aiding, abetting, or assisting in it.—And gentlemen, to support this charge against the prisoners, the first witness examined was Mr. Wilson, who informs you, that he had an affair with the rebels in Dirty-lane, after which he retreated to a watch-house in New-street; that the prisoners were brought to him by the watchmen, who also brought in four pikes. He swears positively that the four men at the bar, were the four men who were brought to him on that night the 23rd of July.

[Here the learned judge stated the remainder of the evidence.]

Mr. Wilson stated to you, gentlemen, the declarations which Begley made in prison, but you are to discharge your minds altogether of them; what was said was taken down in writing, and no parole evidence should be received of it; and even if the writing were produced, very little regard should be paid to it, under the circumstances which have appeared; for it is laid down by an able writer, that evidence of confession should be cautiously received.—“The human mind, under pressure of calamity, is easily seduced; and is liable, in the moment of danger, to acknowledge indiscriminately, a falsehood, or a truth, as different agitations may prevail. A confession, therefore, whether made upon an official examination or in discourse with private persons, which is obtained from a defendant, either by the flattery of hope, or by the impressions of fear, however slightly the emotions may be implanted, is not admissible evidence; for the law will

“not suffer a prisoner to be made the deluded instrument of his own conviction.”

Gentlemen, I mention this to let you in what light the evidence should be received; for even if it were admitted here, little attention ought to be paid to it. But you will discharge your minds of it altogether, because it is not now before you.

[After going through the evidence, the learned judge proceeded.]

In order to convict these men of this offence, it is necessary that you should be satisfied they were aiding, assisting, and abetting in the rebellion; and that their motive in having pikes in their hands, on that night was that of aiding, assisting, and abetting in rebellion. The time when they were taken—so soon after the attack upon the Corn-guard—and the weapons which they had in their hands, are strong circumstances against them. It is not direct evidence against them for they were not seen at the place of attack—they were taken in another street, and made no resistance; but direct evidence is not indispensably necessary. Strong presumptive evidence is as satisfactory for conviction as any other;—as in the common case stated in murder.—A man is seen coming out of a house with a drawn sword in his hand, bloody, and a person is found dead in the house; though no person saw the wound inflicted, it is strong presumptive evidence of the guilt of the man who came out. Here there is not so strong presumptive evidence but there is a strong probability, which is a ground for inferring a fact. But probability is a ground which should be trod with caution, especially in a case where the life of a man is concerned; for it is nothing more than an inference of the mind from facts laid before it; and such inferences are liable to fallibility, as all deductions of the mind are, as the circumstances may operate differently upon different minds. Probable circumstances, however, seldom err; they are not fabricated for the purpose; whereas direct evidence may be fabricated. There are additional circumstances to be considered in this case;—one of the prisoners came from Naas, and he gives us no account what brought him to town. The others allege excuses for their coming;—that they came to buy clothes, but they gave no evidence of that, and this may strengthen the ground of probability against them. Against this you weigh their conduct, when they were stopped;—they made no resistance;—men, in that situation, if engaged in the insurrection, would not submit so quietly.

Character is also some evidence, where probability is the ground of the accusation.

Upon the whole, if you are of opinion, that each of the prisoners was of the party engaged in the insurrection that night, you ought to find them guilty, being satisfied of their identity;—but real and well-founded

doubt is ground of acquittal. Many men were forced to take up pikes that night, and if you have any rational well-grounded doubt of the guilt of the prisoners, though many lamentable consequences flowed from the events of that night, you ought to acquit them.

The Jury retired, and, after deliberating a

quarter of an hour, returned a verdict, finding the four prisoners GUILTY.

The prisoners were then remanded.

And on Wednesday, the 14th of September, they were brought up and received sentence.

They were afterwards executed at Palms-town.

664. Proceedings on the Trial of ROBERT EMMET, Esq. for High Treason; before the Court holden under a Special Commission at Dublin, on Monday September the 19th: 43 GEORGE III. A. D. 1803.

Monday, September 19th, 1803.

The Court sat pursuant to adjournment.

Judges present:—Lord Norbury, Mr. Baron George, and Mr. Baron Daly.

Robert Emmet, esq. was put upon his trial.

He had been brought into court upon the 7th of this month, and then informed, that a bill of indictment for high treason was found against him, and he was desired to name his counsel and agent, which he did—but some alterations afterwards took place at his own desire,* and the counsel and agent ultimately

assigned, were Mr. Burrowes and Mr. Mac Nally, counsel; and Mr. L. MacNally, agent.

On Wednesday the 15th he was arraigned on the following indictment:—

County of the City of } THE jurors for our
Dublin to wit } lord the king upon their oath present that Robert Emmet late of Thomas-street in the city and county of the city of Dublin esq. being a subject of our said lord the now king not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against

* The following extract from the very interesting *Life of the Right Hon. J. P. Curran by his Son W. H. Curran, Esq.*, will serve to explain the alteration which took place in the appointment of counsel assigned for the defence of the misguided subject of the present trial. It will also elucidate some parts of Mr. Emmet's conduct which are not generally understood.

"In the following facts as far as they are generally connected with Mr. Curran, there is indeed no new disclosure. It is a matter of notoriety, that at this period his house was searched—that he appeared himself before the members of the privy council—and that a rumour prevailed, to which his political enemies gave a ready credit, and as far as they could, a confirmation, that he was personally implicated in the recent conspiracy. To be silent, therefore, upon a subject so well known, would be a fruitless effort to suppress it; to allude to it remotely and timidly would be to imply that the whole could not bear to be told: it only remains then to give an explicit statement of the particulars, and to subjoin one or two original documents, which will be found to corroborate it in every essential point.

"The projector of the late insurrection, Mr. Robert Emmet, who was a young gentleman of a highly respectable family, of very striking talents and interesting manners, was in the habit of visiting at Mr. Curran's house:

here he soon formed an attachment for Mr. Curran's youngest daughter. Of the progress of that attachment, and of the period and occasion of his divulging it to her, Mr. Emmet's letters, inserted hereafter, contain all that is to be told. It is necessary, however, to add, as indeed will sufficiently appear from those letters, that her father remained in total ignorance of the motive of Mr. Emmet's visits, until subsequent events made it known to all. To a man of his celebrity and attractive conversation, there seemed nothing singular in finding his society cultivated by any young person to whom he afforded (as he so generally did to all) the opportunities of enjoying it. As the period, however, of the intended insurrection approached, Mr. Curran began to suspect, from minute indications, which would probably have escaped a less skilful observer, that his young visitor was actuated by some strong passions, which it cost him a perpetual effort to conceal; and in consequence, without assigning to those appearances any precise motive, or giving the subject much attention, he, in general terms, recommended to his family not to allow what was at present only a casual acquaintance to ripen into a greater degree of intimacy.

"Upon the failure of the insurrection, its leader escaped, and succeeded for some weeks in secreting himself. There is reason to believe, that had he attended solely to his safety, he could have easily effected his departure

our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true

and dutiful subject of our said sovereign his the king towards him our said lord the king should bear wholly withdrawing all

from the kingdom; but in the same spirit of romantic enthusiasm which distinguished his short career, he could not submit to leave a country to which he could never more return, without making an effort to have one final interview with the object of his unfortunate attachment, in order to receive her personal forgiveness, for what he now considered as the deepest injury. It was apparently with a view to obtaining this last gratification that he selected the place of concealment in which he was discovered: he was arrested in a house situate midway between Dublin and Mr. Curran's country seat. Upon his person were found some papers, which showed that subsequent to the insurrection he had corresponded with one of that gentleman's family: a warrant accordingly followed, as a matter of course, to examine Mr. Curran's house, where some of Mr. Emmet's letters were found, which, together with the documents taken upon his person, placed beyond a doubt his connexion with the late conspiracy, and were afterwards used as evidence upon his trial.

"It was from this legal proceeding that Mr. Curran received the first intimation of the melancholy attachment in which one of his children had been involved. This is not the place to dwell upon the agony which such a discovery occasioned to the private feelings of the father. It was not the private calamity alone which he had to deplore; it came embittered by other circumstances, which, for the moment, gave his sensibility an intenser shock. He was a prominent public character, and from the intrepid resistance which he had uniformly made in the senate and at the bar to the unconstitutional measures of the state, was inevitably exposed to the political hatred of many, who would have gloried in the ruin of his reputation as in a decisive triumph over those principles which he had all his life supported. He had seen and experienced too much of party calumny not to apprehend that it would show little respect for a misfortune which could afford a pretext for accusation; and however secure he might feel as to the final results of the most merciless investigation, he still could not contemplate without anguish the possibility of having to suffer the 'humiliation of an acquittal.' But his mind was soon relieved from all such distressing anticipations. He waited upon the attorney-general [the right honourable Standish O'Grady, the present chief baron of the exchequer in Ireland] and tendered his person and papers to abide any inquiry which the government might deem it expedient to direct. That officer entered into his situation with the most prompt and manly sympathy, and instead of assuming the character of an accuser of the father, more generously displayed his

zeal in interceding for the child. At his instance, Mr. Curran accompanied him to the privy council. Upon his first entrance there was some indication of the hostile spirit which he had originally apprehended. A noble lord who at that time held the highest judicial situation in Ireland, undertook to examine him upon the transaction which had occasioned his attendance. To do this was undoubtedly his duty; but overstepping his duty, or at least his prudence, he thought proper to preface his intended questions by an austere, authoritative air, of which the probable meaning was, that he considered intimation as the most effectual mode of extracting the truth. He fixed his eye upon Mr. Curran, and was proceeding to cross-examine his conduct, when (as is well remembered by the spectators of the scene) the swell of indignation, and the glance of stern dignity and contempt which he encountered there, gave his own nerves the shock which he had mistaken for another's, and compelled him to shrink back into his chair, silent and demoralized at the failure of his rash experiment. With this single exception, Mr. Curran was treated with the utmost delicacy; for this he was principally indebted to the friendship of the attorney-general, who finding that every inquiry and document upon the subject explained all the circumstances beyond the possibility of an unfavourable conjecture, manfully and (where it was necessary) firmly interposed his authority, to save the feelings of the parent from any additional affliction.

"The following are the letters which seem requisite to introduce. There was a time when the publication of them would have excited pain, but that time is past. The only persons to whom such a proceeding could have given a pang, the father and the child, are now beyond its reach; and the survivor, who from a sense of duty persuades them to see the light, does so under a full persuasion, that all those who from personal knowledge, or from report, may sometimes recal their memories with sentiments of tenderness or esteem, will find nothing in the contents of those documents which can provoke the intrusion of a harsher feeling."

"From MR. ROBERT EMMET to JOHN PHILLIPS CURRAN, Esq.

"I did not expect you to be my counsel. I nominated you, because not to have done so might have appeared remarkable. Had I been in town, I did not even wish to have seen you; but as he was not, I wrote to you to come to me once. I know that I have done you very severe injury, much greater than I can atone for with my life: that atonement I did offer to make before the privy council, by pleading guilty, if those doc-

contriving and intending the peace and common tranquillity of this kingdom to disquiet molest and disturb and the government and

ments were suppressed. I offered more—I offered, if I was permitted to consult some persons, and if they would consent to an accommodation for saving the lives of others, that I would only require for my part of it the suppression of those documents, and that I would abide the event of my own trial. This also was rejected; and nothing but individual information (with the exception of names) would be taken. My intention was, not to leave the suppression of those documents to possibility, but to render it unnecessary for any one to plead for me, by pleading guilty to the charge myself.

“The circumstances that I am now going to mention, I do not state in my own justification. When I first addressed your daughter, I expected that in another week my own fate would be decided. I knew that in case of success, many others might look on me differently from what they did at that moment; but I speak with sincerity, when I say that I never was anxious for situation or distinction myself, and I did not wish to be united to one who was. I spoke to your daughter, neither expecting, nor, in fact, under those circumstances, wishing that there should be a return of attachment; but wishing to judge of her dispositions, to know how far they might be not unfavourable or disengaged, and to know what foundation I might afterwards have to count on. I received no encouragement whatever. She told me that she had no attachment for any person, nor did she seem likely to have any that could make her wish to quit you. I staid away till the time had elapsed when I found that the event to which I allude was to be postponed indefinitely. I returned by a kind of infatuation, thinking that to myself only was I giving pleasure or pain. I perceived no progress of attachment on her part, nor any thing in her conduct to distinguish me from a common acquaintance. Afterwards I had reason to suppose that discoveries were made, and that I should be obliged to quit the kingdom immediately; and I came to make a renunciation of any approach to friendship that might have been formed. On that very day she herself spoke to me to discontinue my visits: I told her that it was my intention, and I mentioned the reason. I then, for the first time, found, when I was unfortunate, by the manner in which she was affected, that there was a return of affection, and that it was too late to retreat. My own apprehensions, also, I afterwards found, were without cause, and I remained. There has been much culpability on my part in all this, but there has also been a great deal of that misfortune which seems uniformly to have accompanied me. That I have written to your daughter since an unfortunate event has taken place, was an addi-

constitution of this realm to change subvert and alter and our said lord the king from the royal state title honour power imperial

tional breach of propriety, for which I have suffered well; but I will candidly confess, that I not only do not feel it to have been of the same extent, but that I consider it to have been unavoidable after what had passed; for though I will not attempt to justify in the smallest degree my former conduct, yet when an attachment was once formed between us—and a sincerer one never did exist—I feel that, peculiarly circumstanced as I then was, to have left her uncertain of my situation would neither have weakened her affections, nor lessened her anxiety; and looking upon her as one, whom, if I had lived, I hoped to have had my partner for life, I did hold the removing her anxiety above every other consideration. I would rather have had the affections of your daughter in the back settlements of America, than the first situation this country could afford without them. I know not whether this will be any extenuation of my offence—I know not whether it will be any extenuation of it to know, that if I had that situation in my power at this moment, I would relinquish it to devote my life to her happiness—I know not whether success would have blotted out the recollection of what I have done—but I know that a man, with the coldness of death on him, need not be made to feel any other coldness, and that he may be spared any addition to the misery he feels not for himself, but for those to whom he has left nothing but sorrow.”*

“From the same to RICHARD CURRAN, Esq.

“My dearest Richard;

“I find I have but a few hours to live, but if it was the last moment, and that the power of utterance was leaving me, I would thank you from the bottom of my heart for your generous expressions of affection and forgiveness to me. If there was any one in the world in whose breast my death might be supposed not to stifle every spark of resentment, it might be you—I have deeply injured you—I have injured the happiness of a sister that you love, and who was formed to give happiness to every one about her, instead of having her own mind a prey to affliction. Oh! Richard, I have no excuse to offer, but that I meant the reverse; I intended as much happiness for Sarah as the most ardent love could have given her. I never did tell you how much I idolized her:—it was not with a wild or unfounded passion, but it was an attachment increasing every hour, from an admiration of the purity of her mind, and respect for her talents. I did dwell in secret upon the

* “The original, from which the above has been copied, is not signed or dated. It was written in the interval between Mr. Emmet’s conviction and execution.” CURRAN.

crown and government of this kingdom to depose and deprive and our said lord the present king to death and final destruction to bring and put he the said Robert Emmet on the twenty-third day of July in the forty-third year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death and that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations and compassing aforesaid he the said Robert Emmet as such false traitor as aforesaid on the said twenty-third day of July in the forty-third year of the reign of our said lord

prospect of our union. I did hope that success, while it afforded the opportunity of our union, might be the means of confirming an attachment, which misfortune had called forth. I did not look to honours for myself—praise I would have asked from the lips of no man; but I would have wished to read in the glow of Sarah's countenance that her husband was respected. My love, Sarah! it was not thus that I thought to have requited your affection. I did hope to be a prep round which your affections might have clung, and which would never have been shaken; but a rude blast has snapped it, and they have fallen over a grave.

"This is no time for affliction. I have had public motives to sustain my mind, and I have not suffered it to sink; but there have been moments in my imprisonment when my mind was so sunk by grief on her account, that death would have been a refuge.

"God bless you, my dearest Richard. I am obliged to leave off immediately.

"ROBERT EMMET."

"This letter was written at twelve o'clock on the day of Mr. Emmet's execution, and the firmness and regularity of the original handwriting contain a striking and affecting proof of the little influence which the approaching event exerted over his frame. The same enthusiasm which allured him to his destiny, enabled him to support its utmost rigour. He met his fate with unostentatious fortitude; and although few could ever think of justifying his projects or regretting their failure, yet his youth, his talents, the great respectability of his connexions, and the evident delusion of which he was the victim, have excited more general sympathy for his unfortunate end, and more forbearance towards his memory, than is usually extended to the errors or sufferings of political offenders."—*The Life of Curran by his Son*, 224—239.

the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did meet consult combine conspire confederate and agree to and with divers other false traitors whose names are to the jury aforesaid, unknown to raise levy and make public and cruel insurrection rebellion and war against our said sovereign lord the king within this kingdom and to procure great quantities of arms and ammunition pistols swords pistols gunpowder and shot for the purpose of said rebellion and to alter laws and overturn the constitution of this kingdom and the government of our said lord the king of and in this realm.

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid falsely maliciously and traitorously did procure great quantities of arms and ammunition guns swords pistols gunpowder and shot and did then and there falsely maliciously and traitorously make and prepare said cause and procure to be made and prepared a great number to wit one thousand pikes with intent that divers other false traitors whose names are to the said jurors unknown should be armed with the said guns swords pikes and pikes and being so armed should use the same and the gunpowder shot and ammunition aforesaid in and for the raising making and carrying on insurrection rebellion and war against our said lord the king and in aid to the committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king in this kingdom.

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid falsely wickedly and traitorously did associate himself with and did become one of a certain society of persons then and there formed and associated under the name of the Provisional Government for the purpose of raising levying and making private war against our said lord the king within the realm and of altering subverting and overturning the constitution of this realm, and the government of our said lord the king of and in this kingdom, the said Robert Emmet then and there well knowing the purposes for which the said society was so formed and associated as aforesaid.

And that afterwards to wit on the said twenty-third day of July in the forty-third year of the reign of our said lord the king with

force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in farther prosecution of his treason and treasonable purposes aforesaid falsely wickedly and traitorously did make compose and write a certain proclamation manifesto and declaration purporting to be a proclamation manifesto and declaration of and by the said Provisional Government and purporting among other things that the said Provisional Government had determined to separate that part of this kingdom called Ireland from that part of this kingdom called England and for that purpose to make levy and wage open and public war against our said lord the king and his troops within this realm with intent that the said proclamation manifesto and declaration should be published as and for the proclamation manifesto and declaration of the said Provisional Government and that it should be spread amongst the people of this kingdom and should incite them to enter into and continue in rebellion and war against our said lord the king

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in farther prosecution of his treason and treasonable purposes aforesaid falsely wickedly and traitorously did make compose and write a certain proclamation manifesto and declaration purporting to be a proclamation manifesto and declaration of and by divers persons to the jurors unknown then and there formed and associated together under the name of the Provisional Government and importing that the said persons so formed and associated had determined to separate that part of this kingdom called Ireland from that part of this kingdom called England and for that purpose to raise levy and wage a public war against our said lord the king within this kingdom with intent that the said proclamation manifesto and declaration should be published as and for the proclamation manifesto and declaration of the said persons so formed and associated and that it should be spread amongst the people of this kingdom and should unite them to enter into and continue in rebellion and war against our said lord the king

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in farther prosecution of his treason and treasonable purposes as aforesaid falsely wickedly and traitorously did keep and conceal and did cause and procure to be kept and con-

cealed a certain proclamation manifesto and declaration purporting to be a proclamation manifesto and declaration of and by divers persons to the jurors unknown then and there formed and associated together under the name of the Provisional Government and importing that the said persons so formed and associated had determined to separate that part of this kingdom called Ireland from that part of this kingdom called England and for that purpose to raise levy and wage a public war against our said lord the king within this kingdom with intent that the said proclamation manifesto and declaration should be published as and for the proclamation manifesto and declaration of the said persons so formed and associated and that it should be spread amongst the people of this kingdom and should incite them to enter into and continue in rebellion and war against our said lord the king

And that afterwards to wit on the said twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in farther prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the said jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king falsely wickedly and traitorously did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said Robert Emmet against the peace of our lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

And the jurors aforesaid upon their oath aforesaid further present that an open and public war on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king and long before and ever since hitherto by land and by sea was and yet is carried on and prosecuted by the persons exercising the powers of government in France against our said lord the king and that the said Robert Emmet a subject of our said lord the king well knowing the premises not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our said lord the king his supreme true lawful and undoubted lord and contriving and with all his strength intending the peace and common tranquillity of this kingdom to disquiet molest and disturb and the government of our said lord the king of this kingdom to change subvert and alter he the said Robert Emmet during the war aforesaid to

July in the forty-third year of the reign of our said lord the king and on divers other days and times as well before as after that day with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid unlawfully and traitorously was adhering to and aiding and comforting the said persons exercising the powers of government in France and then being enemies of our said lord the king as aforesaid and that in prosecution performance and execution of the said traitorous adhering of the said Robert Emmet to the said persons exercising the powers of government in France afterwards and during the continuance of the said war to wit on the said twenty-third day of July in the said forty third year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin he the said Robert Emmet as such false traitor as aforesaid with force and arms falsely maliciously and traitorously did meet consult combine conspire confederate and agree to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this kingdom and to alter subvert and overturn the constitution of this kingdom and the government of our said lord the king of and in this realm

And that afterwards to wit on the said 23rd day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes last mentioned falsely maliciously and traitorously did make and prepare and did cause and procure to be made and prepared a great number to wit one thousand pikes with intent that divers other false traitors whose names are to the said jurors unknown should be armed with the said pikes and being so armed should use the same in and for the raising and carrying on insurrection rebellion and war against our said lord the king and did then and there procure great quantities of arms and ammunition guns pistols swords pikes gun-powder and shot, for the purpose of, the said insurrection rebellion and war

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in farther prosecution of his treason and treasonable purposes last mentioned falsely wickedly and traitorously did associate himself with and did become one of a certain society of persons then and there formed and associated under the name of the Provisional Government, for the purpose of raising levying and making public

war against our said lord the king within the realm and of altering subverting and overturning the constitution of this realm and the government of our said lord the king of and in this kingdom the said Robert Emmet the and there well knowing the purposes for which the said society was formed and associated as aforesaid

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in the farther prosecution of his treason and treasonable purposes last mentioned falsely wickedly and traitorously did make compose and write a certain proclamation manifesto and declaration purporting to be a proclamation of and by the said Provisional Government and purporting amongst other things that the said Provisional Government had determined to separate that part of this kingdom called Ireland from that part of this kingdom called England and for that purpose to make levy and wage open and public war against our said lord the king and his troops within this realm with intent that the said proclamation manifesto and declaration should be published as and for the proclamation manifesto and declaration of the said Provisional Government and should be spread amongst the people of this kingdom and should incite them to enter into and continue in rebellion and war against our said lord the king

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in farther prosecution of his treason and treasonable purposes last mentioned falsely wickedly and traitorously did make compose and write a certain proclamation manifesto and declaration purporting to be a proclamation manifesto and declaration of and by divers persons to wit persons unknown and then and there formed and associated together under the name of the Provisional Government and importing that the same persons so formed and associated had determined to separate that part of the kingdom called Ireland from that part of the kingdom called England and for that purpose to raise levy and wage a public war against our said lord the king within this kingdom with intent that the said proclamation manifesto and declaration should be published as and for the proclamation manifesto and declaration of the said persons so formed and associated and that it should be spread amongst the people of this kingdom and should incite them to enter into and continue in rebellion and war against our said lord the king

And that afterwards to wit on the said

day of July in the said 43rd year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Robert Emmet as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes last mentioned falsely wickedly and traitorously did keep and conceal and did cause and procure to be kept and concealed a certain proclamation manifesto and declaration purporting to be a proclamation manifesto and declaration of and by divers persons to the jurors unknown then and there formed and associated together under the name of the provisional government and importing that the said persons so formed and associated had determined to separate that part of this kingdom called Ireland from that part of this kingdom called England and for that purpose to raise levy and wage a public war against our said lord the king within this kingdom with intent that the said proclamation manifesto and declaration should be published as and for the proclamation manifesto and declaration of the said persons so formed and associated and that it should be spread amongst the people of this kingdom and should incite them to enter into and continue in rebellion and war against our said lord the king

And that afterwards to wit on the said twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid the said Robert Emmet as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes last mentioned with a great multitude of persons whose names are to the said jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king falsely wickedly and traitorously did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said Robert Emmet against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

And the said jurors of our said lord the king upon their oath do further present that the said Robert Emmet being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said sovereign lord the king and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said lord the king

with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom and in order to fulfil and bring to effect the said traitorous compassing imaginations and intentions of him the said Robert Emmet he the said Robert Emmet afterwards to wit on the said twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully and traitorously assembled, and gathered together against our said lord the now king wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of him the said Robert Emmet against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

The prisoner pleaded Not Guilty; and being asked, was he ready for trial, said, he would be ready on Monday; to which the attorney-general consented, and the Court adjourned.

Accordingly on Monday, 19th September, Mr. Emmet was put upon his trial.

Judges present—Lord Norbury, Mr. Baron George, and Mr. Baron Daly.

The following jury was sworn, after twelve had been set by on the part of the Crown, two had been challenged by the prisoner, for cause, not having freeholds in the city, nor being freemen thereof; and nineteen challenged peremptorily:

John Geale,	W. G. Galway,
John Dickson,	Charles Harte,
Robert Turbot,	Benjamin Holmes,
Daniel Kinahan,	John Lloyd,
Beaver Buchannan,	Walter Locke,
William Davis,	Thomas Palmer,

The prisoner was given in charge.

Counsel for the Crown.

Mr. Attorney General [The right hon. Standish O'Grady, afterwards lord chief baron of the court of Exchequer].

Mr. Solicitor General [James Mac Lelland, afterwards a baron of the Exchequer].

Mr. Plunkett.

Mr. Mayne.

Mr. Townsend.

Mr. Ridgeway.

Mr. O'Grady.

Agents.—Messrs. T. and W. Kemmis, crown-solicitors.

Counsel for the Prisoner.

Mr. Burrowes.

Mr. Mac Nally.

Agent.—Mr. L. Mac Nally.

Mr. O'Grady opened the indictment.

Mr. Attorney General.—My lord, and gentlemen of the jury;—It is my duty to state, as concisely as I can, the nature of the charge which has been preferred against the prisoner at the bar; and also, gentlemen, the nature of the evidence which will be produced to substantiate that charge. It will require upon your part the most deliberate consideration; because it is not only the highest crime of which at all times the subject can be guilty; but it receives, if possible, additional aggravation, when we consider the state of Europe, and the lamentable consequences which the French revolution has already brought upon it.

Perhaps at former periods some allowance might be made for the heated imaginations of enthusiasts; perhaps an extravagant love of liberty might for a moment supersede a rational understanding, and men might be induced, through the want of sufficient experience or capacity, to look for that liberty in revolution. But sad experience has taught us, that modern revolution is not the road to liberty. It throws the mass of the people into agitation only to bring the worst and the most profligate to the surface. It originates in anarchy, proceeds in bloodshed, and ends in cruel and unrelenting despotism.

Therefore, gentlemen, the crime of which the prisoner stands charged demands the most serious and deep investigation; because it is in its nature a crime of the blackest dye, and which under all the existing circumstances does not admit of a momentary extenuation.

Gentlemen, the prisoner stands indicted upon a very ancient statute, the 25th of Edward 3rd, and the indictment is grounded upon three clauses. The first relates to compassing and imagining the death of the king; the second to adhering to his enemies; and the third to compassing to levy war against him. The two latter, namely, that of adhering to the king's enemies, and that of compassing to levy war, are so intelligible in themselves, that they do not require any observation upon them. But the first does admit of some technical consideration, and may require upon my part a short explanation.

In the language of the law, compassing the death of the king does not mean or imply necessarily any immediate attack upon his person. But any conspiracy, which has for its object an alteration of the laws, constitution, and government of the country by force, uni-

formly leads to anarchy and general destruction, and finally tends to endanger the life of the king; and therefore where that design is substantiated and manifested by overt act; whenever the party entertaining the design uses any means to carry his traitorous intentions into execution, the crime of compassing, and imagining the death of the king is complete.

Accordingly, gentlemen, this indictment particularly states several overt acts by which the prisoner disclosed the traitorous intentions of his heart. And, gentlemen, if it shall be necessary, those particular overt acts and the applicability of the evidence which will be produced to support them, will be stated at large to you by the Court; for which reason it will not be necessary for me now to trespass upon the public time by a minute examination of them.

Gentlemen, having heard the charge against the prisoner, you will naturally feel that your duty will require an investigation into two distinct points: first, "Whether there has or has not existed a traitorous conspiracy and rebellion for the purpose of altering the law, the constitution, and the government of the country by force? and, secondly, "Whether the prisoner has in any, and what degree, participated in that conspiracy and rebellion?"

Gentlemen, I was happy upon the opening of this commission to have stated to the public through the jury which I had the honour to address, that this rebellion, dark as it was in its object, and mischievous in its design, was in truth, in point of numbers, contemptible and the extreme, and that it was prepared as put forward by those only, who had been distinguished for their former treasons. I am happy to state now, with more confidence, that during the investigation which has taken place here, what I then stated has turned out to be precisely the fact. I then also congratulated the public upon the tranquillity of the country; and I am happy at this period to be able to renew those congratulations, and to state, that notwithstanding the cruel and dastardly efforts of that rebellion, peace and tranquillity now reign throughout the land. I did not then, nor will I now, state any prospective views of my own. I do not wish to undertake to speak in the prophetic. But when I consider the vigilance and firmness of his majesty's government, and the spirit and discipline of his majesty's troops, and the armed valour and loyalty, which, from every end of the country to the other, has risen itself for the purpose of crushing domestic treason, and, if necessary, of meeting and repelling a foreign foe, I do not think it unreasonable to indulge a sanguine hope, that a continuance of the same conduct upon the part of the government, and of the same exertions upon the part of the people, will long

* See the attorney-general's address to the jury in Kearney's case; ante, p. 693.

preserve the nation, free, happy, and independent.

Gentlemen, upon former occasions, persons were brought to the bar of this court, implicated in the rebellion in various though inferior degrees. But if I am rightly instructed, we have now brought to the bar of justice, not a person who has been seduced by others, but a gentleman to whom the rebellion may be traced, as the origin, the life, and the soul of it. If I mistake not, it will appear, that some time before Christmas last, the prisoner, who had visited foreign countries, and who for several months before had made a continental tour, embracing France, did return to this country, full of these mischievous designs which have now been so fully exposed. He came from that country in which he might well have learned the necessary effects of revolution; and therefore if he be guilty of the treason, he embarked in it with eyes open, and with a previous knowledge of all its inevitable consequences. But notwithstanding, I am instructed, that he persevered in fomenting a rebellion, which, I will be bold to say, is unexampled in any country ancient or modern;—a rebellion which does not complain of any existing grievances, which does not flow from any immediate oppression, and which is not pretended to have been provoked by our mild and gracious king, or by the administration employed by him to execute his authority. No, gentlemen, it is a rebellion which avows itself to come, not to remove any evil which the people feel, but to recall the memory of grievances which, if they ever existed, must have long since passed away. The provocations of six hundred years have been ransacked—the sufferings of our ancestors have been exaggerated—our state in former ages, and at various remote times, misrepresented, in expectation of extracting from the whole something like a provocation to justify a revolution, which at the present hour and moment could have no rational foundation. We live under a constitution which we love; free, affluent, and happy, rebellion can find no incentive in our present condition. We feel the happy effects of beneficial laws. Of the just administration of them there is no colour of complaint. But this rebellion is to arise from the ashes of our ancestors, and we are called upon to relinquish our own happiness to vindicate their wrongs; they are represented to have been slaves, and therefore we are called upon not to live contented as freemen. But as there is no motive for rebellion now, neither can its supporters be conciliated hereafter. The manifesto of treason wages eternal war against the British constitution, the resentment of its enemies is implacable, their resolution is fixed and determined—no kindness shall soothe them, no good administration shall reconcile them, no clemency shall assuage them. Rebels they are at heart, and against the mildest administration of our government

they proclaim a perpetual and unrelenting hostility.

Gentlemen, it may be here supposed that I am, from the warmth of my own feelings, giving a colour to the cause which it does not deserve. I should be sorry to do it. But in the very first paragraph of their proclamation, after avowing a separation from England, they tell the government, “that there is a spirit of perseverance in the country beyond their power to calculate or repress,” “that under no change of circumstances can they count upon the obedience of Ireland—” “under no aspect of affairs can they judge of its intentions.” So that let the government be mild and merciful, and the subjects free and contented; let the laws be just, and the administration of them pure, it will work no alteration in the minds of these enthusiastic reformers; the government may improve, but they are resolved not to imitate its example. They have already devoted their country to all the horrors of civil war, and the inveterate malignity of their resolution will admit of no relaxation.

Gentlemen, having stated to you what the horrid object of the conspiracy was, I shall very shortly submit to you the means which were taken by the prisoner to carry it into effect. I have already stated that I consider him as the origin of that rebellion. I will now state the facts upon which I found that assertion. His proclamation, for I impute it to him, states that this system of treason has been organized within the last eight months. Now I find this gentleman's arrival in Ireland to have been previous to Christmas 1802, which was just eight months before the rebellion broke out, and therefore a fair inference arises, that this gentleman's arrival in this country from France is the source to which the rebellion may be traced; and the conduct adopted by him leaves little room to suppose I can be mistaken in this conjecture. He might have found the embers of the rebellion of 1798, but he shortly blew them into life and animation. His machinations had not proceeded far, when, for his security, he found it necessary to change his residence and his name. Accordingly, we find him in an obscure house in Harold's-cross, during the spring of the year; there he assumed the name of Hewitt, and was visited by persons who inquired for him by that name; while he continued there, he went by no other. Thus, I am instructed to tell you, he proceeded clandestinely, and under an assumed name, for a considerable period of time, not passing much of it within doors at Harold's-cross, but acting that part which was adapted to his views—there he continued until early in March.

Gentlemen, you all recollect the king's message to the House of Commons, from which it was to be collected that a rupture would probably take place between this united kingdom and France;—that was early in

March. That circumstance was a very considerable stimulative indeed to the treason which had been heretofore set on foot in this country; and accordingly, upon the 24th of same month that memorable depôt, of which you have all heard so much, was taken by the conspirators; the lease of it is dated the 24th of March, 1803. About the same period there were various other depôts established in the city to receive arms and ammunition, and among others, one, which is necessary to be mentioned, in Patrick-street, where you recollect an explosion took place in the month of July.

Having thus embarked pretty deeply, and hired several houses in the city for the purpose of carrying on the treason, the prisoner found, that his residence in Palmer's house in Harold's-cross was incompatible with the enlarged sphere of action in which he was engaged, and he removed to a house in the vicinity of Rathfarnham, in a place called Butterfield-lane; for this house he paid a fine of 61 guineas; on the 27th of April he got possession of it, and the lease was executed upon the 10th of June. He took that lease under the name of "Robert Ellis;" he made the agreement, paid the fine, and signed the leases with the same name; and if any collateral circumstances were wanting to induce suspicion upon this transaction, I am to state, that one of the witnesses to the lease was a gentleman of the name of John Dowdall, a person of much treasonable celebrity. He too like his companion did not always bear his own name (and indeed I admit he might have readily changed it for a better); but the attorney who drew out the leases happened to be a countryman of Dowdall's and perfectly known to him. When Dowdall saw him, it occurred to him that the name of Frazer, which was the name he assumed, would not answer upon that occasion, and therefore he attested the leases with his own real name. When the leases were executed, and the parties retired from the house of Mr. Frayne, who, as executor of one Martin, was the lessor in the lease, Mr. Tyrrell, the attorney, asked him if he knew the gentlemen with whom he had concluded the bargain; he said, he did not, but that his co-executor, one Rooney, who had made the agreement originally and received the money, might know something about them, but he believed he was equally uninformed with himself. I fear, said Mr. Tyrrell, if they are all like Dowdall, that they can be about no good purpose. He never was distinguished as a very good subject, and I fear his visit to Fort George has not much improved his constitutional feelings.

Gentlemen, we were at that time in profound domestic peace. Every man thought himself secure. We knew what might be expected from abroad, and we were prepared to meet it with firmness and composure. But with regard to domestic treason, the mild

conduct of the government towards the people, and the clemency extended even to traitors themselves, gave reason to hope we should no longer be disturbed by intestine machinations. But there is an evil spirit in some which no mercy can subdue, and has been unhappily found that where the generous feelings of the human mind are distinct, it is easier to intimidate than convert. Mr. Frayne was deceived, though he saw no furniture in the place but one cottrass upon which they occasionally slept, as if they were in a camp, though he found it frequently visited by strangers, and yet seldom by more than one at a time; and as they sat up late at night, as if upon consultations, yet he entertained no suspicion for public safety; if in truth he had suspected their mischievous designs, in one hour a whole party would have been taken. But he did not interfere or molest them. Providence permitted them to proceed, that the proof of their guilt might be more notorious. These persons continued in this retreat, under these suspicious circumstances until the explosion in Patrick-street, which took place on the 16th of July; this circumstance made it imperative upon them to do something quick, or their treason would be discovered. Accordingly, if I am not mis-instructed, immediately after this explosion, these gentlemen who had been theretofore occasionally absent for a night or two, altogether deserted their habitation in Butterfield-lane, and took up their residence in the city of Dublin.

Gentlemen, I impute to the prisoner the immediately after this explosion, he not only came into town for the purpose of forwarding the rebellion, but that he made that celebrated depôt, which was afterwards discovered the place of his residence and his retreat. I trace him to that depôt, as I would trace any of you to your houses; you will find him there the master of the family—superintending the formation of pikes and ball cartridges—inspecting the ammunition—inspecting the arms—occasionally writing at his desk—consequently, I think, taking out the original manuscript from which the proclamation was afterwards printed, and reading it to the rebel garrison which surrounded him—at another time in a playful and sportive mood taking his recreations from his desk, putting them on, and telling his admiring audience what mighty feats he intended to perform in them; and in short, you will find him in this depôt what he expected to be in the country at large, the acting manager, making every thing his own and every person obeying his directions.

Gentlemen, it will appear to you, that there was in that depôt a mattress upon which we suppose that he occasionally slept; if, indeed, under such circumstances, it is not going a little too far to suppose, that any man could sleep; his mind must have been of more than ordinary temperature, if his slumbers were not a little disturbed. Surrounded, as

he was, with the implements of death, prepared and collected by himself for the purposes of civil war, and the destruction of his fellow-citizens, he could not easily enjoy soft natural repose. If he did, it must have been produced by that wearying perturbation of mind, agitated by enthusiasm, which listens not to reason, but shaping every thing to its own hopes, and believing that probable which is remotely possible, gives to the phantoms of a disordered brain the substance and stability of truth. Under such circumstances, no man could lay his head upon his pillow, and call upon his God to lighten the darkness which surrounded him, and to preserve him from the perils and the dangers of the night. What mind could take refuge in the consolations of religion, while it was occupied in meditations how to drag our gracious monarch from his hereditary throne, and to immerse him in the blood of his subjects? But the reflections of reason cannot be applied to the ravings of enthusiasm!

I shall be able by reading an extract from a paper (which was found in the dépôt, and which I personally attribute to the prisoner) to give you a better description than my own of that disturbed and infatuated mind, which throws itself down the precipice, unconscious of its ruin. It is inimitably descriptive of that infatuated state of mind, which unfortunately for him, and unfortunately for mankind, has produced so much modern mischief; speaking of himself, he says, "I have little time to look at the thousand difficulties which still lie between me and the completion of my wishes; that those difficulties will likewise disappear, I have ardent, and I trust, rational hopes; but if it is not to be the case, I thank God for having gifted me with a sanguine disposition: to that disposition I run from reflection, and if my hopes are without foundation, if a precipice is opening under my feet, from which duty will not suffer me to run back, I am grateful for that sanguine disposition which leads me to the brink and throws me down, while my eyes are still raised to the vision of happiness that my fancy formed in the air."

No man who had not felt enthusiasm could describe it so well—ill-fated and delirious passion, which bestows the colour of virtue upon the extravagance of vice, and feeds with rapture upon the delusions of hope, to the moment of its dissolution. But let me call upon the sober understandings of those who never felt its operations, and ask why they participate in its madness? Can the deluded peasantry be brought to join in wild projects, without feeling the impulse which gave them birth—can they listen to the voice of a man who avows that he acts not from the dictates of reason or reflection, but who flies from both, to the delusions of fancy, nor suffers the delicious dream to evaporate, until the unhappy victim is relieved from his disturbed imagination, and sinks into eternal rest? Do

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they mean to unite their fortunes to his, or do they not rather imagine, when they hear of "The Provisional Government," that it is composed of wisdom, caution, and prudence?—they little know, that it is a composition of heated minds and disordered passions, which supersede the judgment, and annihilate the understanding. If they doubt the fact, I request they may take it from the conspirator himself. Let them listen to his voice, if not to mine, and let them learn to withdraw from that precipice, the peril of which is not within their calculation when they embark in his designs.

Gentlemen, to the same unhappy feelings is to be attributed the conduct of the prisoner upon the day of the attack. I find him in the morning vaunting of his powers and promising victory. I find him in idle exclamation, declaring that "he will make the castle tremble that night." I trace him to the dépôt, and there I find him haranguing his men, encouraging them to action, inspecting his ammunition anew, arming himself and dressing in his regimentals. I find him clothed in green, assuming the rank and title of general. I find upon one side of him the same William Dowdall, as his lieutenant-general, and upon the other side a man of no superior distinction, one Stafford, a baker. I am unwilling to mention any names but those which of necessity must appear in the prosecution of this inquiry; and one great object, while inquiry is afloat, is not to bring forward more than must necessarily appear upon the particular indictment before you. A farther disclosure would not only be unnecessary but unjust. Another of his lieutenant-generals whom I may mention was Michael Quigley, formerly an eminent bricklayer, and who had been sent to travel for life under the Banishment Act. Of three persons, you see, that one was a man whose former conduct had been passed over, and who was not excluded from a residence in this country—another was a man sent into temporary banishment, and who, after a slight purgation at Fort George, was permitted to return—and the third, who had been transported for his treasons, forfeited his life by the very act of returning amongst us. So that when I give this glance of the Provisional Government, I am happy again to observe, that I find no new talent, no new property, no new character embarked in this conspiracy; and if the people of Ireland, who are not insensible to the influence of rank and character, could but take one glance of the precious materials of which this Provisional Government is formed, I think it would for ever cure them of revolutionary speculations.

Gentlemen, I do not wish to give any description of the prisoner. Let him be spoken of by others. I wish not, in his present unfortunate circumstances, to say any thing that could appear to depreciate his situation,

but from his years he was not calculated to become the key-stone of such an arch—the head of this conspiracy. The second is a man who was originally known to you as secretary to the Whig club, who afterwards resided at Fort George, and who has latterly been an itinerant clerk with little lawful occupation—the third has been banished by act of parliament for treason, and the fourth had been a baker in Thomas-street. These were the principal conspirators and general officers upon that memorable night, and I do repeat it, that if the deluded people of Ireland would take a glance behind the scene and discover this highly vaunted “Provisional Government,” sitting upon the second floor of a malt-house, meditating without means, and marshalling armies that they had never enlisted, if they could see the prisoner, the prime leader of this all-powerful authority, and his immediate supporters, composed of clerks, bankrupts, and mechanics, and those again surrounded by fifty or sixty persons distinguished only for their crimes; I say, they would form a very different notion of that “Mighty Consulate!” with whose fortune they have united, from that which perhaps they have been for a moment seduced to entertain.

But the appointed hour arrives—the prisoner puts himself at the head of his motley banditti—the party at this time amounts not to one hundred men, but there is an expectation of numerous recruits arriving from the country, they are expected to approach through every avenue. He marches out with his pistols on either side, and his sword glittering in the air; the implements of death are distributed amongst his crew. He leads them into Thomas-street, and even there this mighty army does not amount to as many men as have since attended the execution of any of these unfortunate persons. The people took a moment for reflection—they saw the misery to which they were devoting the country, and the immediate destruction in which they were involving themselves, they refused to assemble at the call of this self-created government, and when the moment of attack arrived after eight months premeditation, there was to be seen a general without an army—colonels without regiments—captains without companies. They had counted recruits upon paper, they had prepared ammunition, they had stored up arms and had every necessary ingredient for rebellion,—*PUT MEN.* I am happy to dwell upon every circumstance that can contribute to show the returning good sense of the people. Their manner of reasoning upon the subject may have been very simple and conclusive; “Shall we enlist in the rebel army, without bounty—shall we serve in it without pay—shall we incur the risk of being killed in the battle, and the still greater danger of being hanged if we survive?” Arguing thus, they find that his majesty’s is a more honourable,

a more secure, and a more profitable service. When they wish to join his ranks, they are paid bounty upon enlisting, they receive, while they serve, they share an honourable danger in the field of battle, and the survivors live to the thanks and the gratitude of the country. The loyal soldier feels not like a rebel, whose worst fears arise when the danger of the battle is over; when the sword is removed from his view, the still more formidable halter swims before his eyes, and hangs him with a terrific vengeance better adapted to his guilt. Upon this fatal evening, the satiated few who composed the mob, came forward only to fly, and that rebellion was to have taken the castle, annihilated the government, and dethroned the king, and precipitated in every direction; and I leave a loss to say whether the general led the way or became a follower in the flight.

What part the prisoner did take in this remarkable transaction, after we left him in Thomas-street at the head of his paltry band, I am not instructed to detail. The pitiless and cruel cruelty of his rabble, though it shrank from combat, indulged itself in the indiscriminate massacre of the unoffending and unprotected. He either continued with them and participated in their crimes, or was perhaps a more charitable conjecture, he retired to some other malt warehouse to reconvene in council, the keys of his majesty’s castle possibly his understanding returned when it was too late, and finding at length the result of his boasted effort to accomplish the revolution, he and his brother generals fled. Without pursuing them farther in their progress, I will for a minute call your attention to the depot which he abandoned, and the papers which were found in it—I shall not harass your feelings or distress my own by stating the atrocities of the night—excesses were committed, which disgraced the cause. It is unnecessary and painful to dwell upon them. This famous arsenal of treason, strongly garrisoned at an early part of the evening, and which contained such stores of ammunition, was carried by the assault of a private soldier with a pistol in his hand. The contents of this depot now so notorious, known will be detailed to you in evidence. There were found in it several suits of regimentals—some stands of rebel colours, and particularly a small desk, which belonged to the prisoner, and from which it appears he had occasionally taken his regimental coat and several papers, and at which he was in the habit of writing. Amongst the papers found there, was a letter from Thomas Addis Emmet, the prisoner’s brother; it is directed to “Mrs. Emmet,” but at the inside appears to be addressed and written to the prisoner himself. I mention it not on account of its contents, but as showing along with other circumstances the prisoner’s presence in the depot, and his property in the desk:—there was found a song addressed to him under the

name of Robert Ellis Butterfield, which not only connects him with the desk and papers, but confirms a former transaction which I stated to you; there was found also a long treatise upon the art of war, which is a farther circumstance to connect him with the design; there was also found a copy of the greater part of the large proclamation; some of the foremost pages have been lost, but sufficient remains to show it was an original draft and that the printed copy was taken from it: it is in various parts interlined and words are altered, which give to it every appearance of a composition; and indeed to suppose that a man would sit down to write that out in manuscript, of which he had several thousand printed copies, is a loose conjecture, which, if it should be pretended, it will be scarce necessary to refute. There were also found not only a great number of those proclamations which have been so often proved upon former occasions; but also another, to which I shall shortly call your attention. The large proclamation is addressed by "the *Provisional Government* to the people of Ireland," the other is addressed "to the citizens of Dublin," only, and it avows, what I before stated, that there is a connexion between this and the late rebellion; and indeed it appears upon every occasion that those who provoked the present were amongst those who escaped the punishment due to the former.

It begins "A BAND of PATRIOTS mindful of their oath, and faithful to their engagement as UNITED IRISHMEN, have determined to give freedom to their country and a period to the long career of ENGLISH OPPRESSION." And what is the oppression which is exercised over us? We live under the same king, we enjoy the same constitution, we are governed by the same laws, we speak the same language, the same fleets and armies protect us, we have common friends and common enemies, in short we are united by every tie of interest, affinity and affection.—But this is justly considered oppression by the same species of logic, which considers a connexion with the despotism of France as the means of promoting our freedom.—This proclamation then goes on to state "that from the extremity of the North to that of the South there is an universal co-operation." And I am happy to say that there has been a co-operation very different from that which was projected—a zealous and hearty concurrence of all ranks of people in support of their king and constitution.—You will recollect, gentlemen, that in the large proclamation there was a studied endeavour to persuade a large portion of the people that they had no religious feuds to apprehend from the establishment of a new government. But the manifesto upon which I am now animadverting has taken somewhat a different course, and has revived religious distinctions at the very moment in which it expresses a desire to extinguish them. ORANGE-MEN, add not to the catalogue of

your follies and crimes; already have you been duped to the ruin of your country in the legislative union with its tyrant; attempt not an opposition; return from the paths of delusion, return to the arms of your countrymen, who will receive and hail your repentance.

"Countrymen of all descriptions, let us act with union and concert, all sects, Catholic, Protestant, Presbyterian, are equally and indiscriminately embraced in the benevolence of our object." I will not apply to this passage all the observations that press upon my mind, because I am sincerely desirous that one feeling and one spirit should animate us all; I cannot but lament that there should be so many sectaries in religion, but trust in God there will be found amongst us but one political faith. But this manifesto is equally unfortunate in every instance in which it prescribes moderation.—Attend to the advice by which it instigates the citizens of Dublin, "in a city each street becomes a desile and each house a battery; impede the march of your oppressors, charge them with the arms of the brave, the pike, and from your windows and roofs hurl stones, bricks, bottles, and all other convenient implements on the heads of the satellites of your tyrant, the mercenary, the sanguinary soldiery of ENGLAND." Having thus roused them, it throws in a few words of composure—"repress, prevent, and discourage excesses, pillage and intoxication;" and to ensure that calmness of mind which is so necessary to qualify them for the adoption of this salutary advice, it desires that they will "remember against whom they fight, their oppressors for six hundred years, remember their massacres their tortures, remember your murdered friends, your burned houses, your violated females." Thus affecting to recommend moderation, every expedient is resorted to which could tend to inflame sanguinary men to the commission of sanguinary deeds.

Gentlemen, you must by this time be somewhat anxious to know the progress of the general, who escaped the memorable action which was intended to be fought; and the first place in which I am enabled to introduce him to you, is at the house of one Doyle, who resides near the Wicklow mountains. There the general and his companions took refuge, at the commencement of the following week; they arrived there at a late hour; the general was still dressed in his full uniform, with suitable lace and epaulettes, and a military cocked hat, with a conspicuous feather. The two other persons I have already mentioned were also decorated in green and gold. They represented themselves as French generals, and spoke the French language, in expectation of stimulating the people with the prospect of foreign aid. The prisoner, it will appear, occasionally spoke broken English; and that the lieutenant generals followed his example: there were fourteen men in the party, all armed, thirteen with blunderbusses and one with a musquet: the generals went to bed

with their host, leaving their followers in the true spirit of equality to shift for themselves—you will find them altogether under these circumstances, and observing such conduct as will leave no doubt upon your minds as to who they were, or for what purpose they fled. Indeed if any mark were wanting, they supplied it, for they left one of the small proclamations behind them, which I have already described. From thence, they proceeded to the house of Mrs. Bagnall, and finally they left the mountains and returned to the city of Dublin. What became of the other persons is foreign to the present inquiry; but we trace the prisoner from those mountains to the same house in Harold's-cross in which he formerly resided, and assuming the old name of Hewitt,—he arrived there upon the Saturday after the rebellion; he had then abandoned his hat, his regimental coat, and the title of general: but he retained his black stock, his regimental breeches and waistcoat, and his hessian boots: these he could not with such readiness change. The vicissitudes of fortune at all times call upon the mind for reflection, and even when they are occasioned by the discomfiture of guilt, they draw with them some involuntary share of commiseration. What a distressing picture does this young man exhibit in this afflicting situation!—he who was lately preparing arms and ammunition for the thousands he was to command, and laws and constitutions for the ten thousands he was to conquer; he who was to have been seated in his majesty's castle, and to have shaken the British empire, is fallen from his fantastic dreams, reduced to become a voluntary prisoner, and to confine that ambition which embraced a nation, within the narrow limits of a cell; here he lay trembling at every blast, and meditating plans, not of conquest, but escape. His chief consolation appears to have been in the occasional society of those friends who received him.

The entire amount of his conversations with them I do not expect to disclose, but it will appear that they turned upon the discomfiture of his schemes, and his defeat at Thomas-street; he spoke of the splendor of his uniform, acknowledged he wore it in the battle, and spoke of the depot in such lamentations as a general would regret the loss of his magazine; he spoke of the proclamation as if he was the composer of it; we find him occasionally betraying his fears, by stating, that upon any alarm he would get out of the back window of his room, and so escape through the fields; in short numberless circumstances will occur, if they were necessary to corroborate the several witnesses, who will be produced against him. Having remained a month in this concealment, information was had, and major Sirr, to whose activity and intrepidity the loyal citizens of Dublin are under much obligation, did confer an additional and a great one, by the zealous discharge of his duty on this occasion. He came by sur-

prise, on the house having sent a countryman to give a single rap, and the door being opened the major rushed in, and caught Mrs. Palmer and the prisoner sitting down to dinner: the former withdrew, and the major immediately asked the prisoner his name, and as if he found a gratification in assuming a variety of titles, he said, his name was Cunningham: that he had that day arrived in the house having been upon a visit with some friends in the neighbourhood; the major then left him in charge with another person, and went to enquire of Mrs. Palmer concerning him: she said, he was a very proper young man of the name of Hewitt, and that he had been in the house about a month; the major at this moment heard a noise, and he found that the prisoner was endeavouring to escape, but having been struck with a pistol by the person who had the custody of him, he was by that means detained; immediately further assistance was called in from a neighbouring garthouse, and an additional sentry was put over him. The major then again proceeded first to interrogate Mrs. Palmer; when the prisoner made another effort, got into the garth through the window, but was at length overtaken by the major, who, at the peril of his life, fortunately secured him; when the major apologized for the roughness with which he was obliged to treat him, the prisoner replied "all was fair in war,"—there were found on his person a variety of papers, but it will be necessary to call your attention to a paragraph or two in one of them, as applicable to your present inquiry; there was another paper found in his room upon a chair immediately near him, and which we impute personally to him, but being found constructively in his possession, it is as strong evidence against him as if found upon his person, and if there were no other circumstances in the case than this paper, it would be sufficient to show that we have not been mistaken in the accusation which we have preferred against him.

The first paper I allude to appears to have been written by a brother conspirator acquainted with his schemes and participating in his crimes; it shows, I think pretty clearly, that the prisoner maintained an intercourse with foreign countries; it also shows that every intelligent rebel is not without his share of apprehensions from his allies in France, and it also gives pretty nearly the same view of the conspiracy with respect to its strength, its union and its respectability, which I took the liberty to suggest upon the first opening of this commission; the first paragraph is this; "I should wish to know particularly from you how matters stand at present (if you would not be afraid), and particularly what are your hopes from abroad, and whether if they pay us a visit, we shall not be worse off than before." What a natural reflection for a person who has probably been no inattentive observer of the French revolution! that revolution commenced in

the redress of grievances, which were admitted to exist; but when those were done away, the wild spirit of modern philosophy would not permit it to stop. It sought for an universal equality in which there should be no one to command, and no one to obey, against the dictates of reason and the ordinances of God. Its first efforts were attended with anarchy and blood; many painful struggles succeeded, until at length the sufferings of the people subsided into submission. Having shaken off the sceptre of a lawful king, they were obliged to take refuge, from their distractions, in the power and authority of a military usurper. They have since endured him in silence—the turbulence of freedom has sunk into a tranquil tyranny. But to preserve the discipline and affections of that army with which he enslaves his people, he finds it necessary to procure its occupation and plunder. He accordingly inflicts it upon every neighbouring nation, either as a friend or as a foe, robbing the weak and cheating the credulous.

And therefore the infatuation and blindness of conspiracy has not gone so far as not to feel that the moment such an army take possession of this country, there will be an end of law, of justice, and of religion; all will be superseded by a military and merciless despotism, and therefore the conspirator himself, when he invokes French assistance to subvert our government, deprecates the notion of their establishment amongst us; but who can let them enter, and then prescribe the limits of their course and the extent of their dominion? who can draw a line around them and say, thus far shall death and desolation spread, but no farther? Nothing but blind infatuation could wish to make the experiment. I shall now state to you a passage which I think of the greatest importance, not only as it discloses the opinion of a brother conspirator upon what has happened, but intimates pretty strongly what may be expected in future; the words are—“He is, very desponding however, and says, the people are *incapable* of redress and *unworthy* of it; this opinion he is confirmed in by the late transaction, which he thinks must have succeeded but for their barbarous *desertion and want of unanimity*; as to the French invasion, he thinks it may not take place at all, and that their plan may be to wear down the English, by the expence of a continual preparation against it.”

I shall now trouble you, gentlemen, with a few extracts from a paper which was found upon a chair near the prisoner at the time of his arrest. It appears to have been dictated by a wish to arrest the administration of justice, and to deter government from pursuing that temperate but inflexible course which it had adopted. Gentlemen, there is no breast so hardened, no conscience so callous, that has not in the progress of guilt some momentary compunctions;—the pri-

soner felt them; he heard of the persons who were apprehended, and of the commission which issued for their trial; he expected the conviction and the death of those whom he had contributed to seduce; and having vainly conceived that the threats of his proclamation had intimidated government in the first instance from proceedings by courts martial, he was resolved to try the effect of another effort to suspend altogether the ordinary administration of the law; he accordingly addressed a paper to government, which begins with the words, “It may appear strange that a person avowing himself to be an enemy of the present government and engaged in a conspiracy for its overthrow, should presume to suggest an opinion to that government of any part of its conduct, or could hope that advice coming from such authority might be received with attention.”

It then goes on to state that the writer, “As a man feels the same interest with the merciful part, and as an Irishman with at least the English part, of the present administration.”

Here you will allow me to observe that in all their proclamations, they endeavour to draw an odious distinction between the English, who support in this country the administration, and those of Irish birth, who presume to do so. The king’s army are to be treated as prisoners of war; but yeomen are to suffer as rebels; the same threat is held out to the Irish militia; if taken in battle they are not to be honoured with the appellation of prisoners of war, but are to be tried by court martial and suffer death for their infidelity.

He then says, he will “communicate to them in the most precise terms that line of conduct which he may hereafter be compelled to adopt, and which, however painful it must under any circumstances be, would become doubly so if he was not conscious of having tried to avoid it by the most distinct notification.” He then proceeds to tell them in the language of an ambassador “that it is not the intention of the undersigned, for the reason he has already mentioned, to do more than state, what government itself must acknowledge, that of the present conspiracy, it knows comparatively speaking—Nothing.”—In this unsuspecting moment of confidence he little knew that his plans were all developed, and his retreat ascertained. But let us follow the paper a little farther, and here let me entreat the attention of all parts of my audience,—“Instead of creating terror in its enemies or confidence in its friends, it will only serve by the scantiness of its information to furnish additional grounds of invective to those who are but too ready to censure it for a want of intelligence which no capacity could have enabled it to obtain.”

This passage is directed to those who suppose, when any disturbances take place, that

rebellion rages in every parish, and is to be found in every house; who immediately exclaim at the supineness of government, if it does not instantly trace by intuition or magic the most remote and hidden sources of treason or disaffection; and who still more charitably conclude, that the government knows nothing which it does not proclaim, without considering how many things the public interests require to be concealed. When any disaster occurs, such persons delight to go about amongst their friends, describing with wonderful precision the accuracy with which they foresaw every circumstance that has taken place; indulging in a species of retrospective prophecy, which certainly can never bring their sagacity to disgrace. But what greater proof need there be of the vigilance of our government than the necessity which these three Constitution Mongers were under of confining their treasons to an obscure house under feigned names, without any communication or concert with the people? The circumspection of government had so encompassed them, that their rebellion did not venture out of doors. Is it very surprising, gentlemen, that under these circumstances, and during a period of domestic tranquillity, the prisoner, the bricklayer, and the clerk, should have been permitted for a few months to indulge in a little household conspiracy; concealing arms and ammunition, but overlooking the trifling circumstance of providing men to make use of them? But when their schemes grew bolder, when the circumspection of government could be no longer eluded, you see how treason was dwarfed by the narrow limits within which vigilance had restrained it. The moment it burst, it evaporated.—Within an hour, and with a force not amounting to one hundred men, this formidable rebellion was extinguished; and the mighty mass of eight months preparation melted into nothing.

This paper then interrogates, "Is it only now we are to learn, that entering into a conspiracy exposes us to be hanged?" I do protest, from the readiness with which some men enter into treasonable pursuits, it would appear as if this salutary lesson remained to be taught, and I wish that no man would embark in these dangerous projects, without seriously asking himself, whether he is prepared to submit to the forfeiture, which will be incurred by his offence—the loss of life and of fortune, and the abandonment of a wife and family to the pains of want, and the reproaches of the world. It farther asks, "Are the scattered instances now to be brought forward, necessary to exemplify the statute, if the numerous striking examples which have already preceded were insufficient?—If government can neither by the novelty of punishment, nor the multitude of its victims, impress us with terror; can it hope to injure the body of a conspiracy impenetrably woven as the present,

"by cutting off a few threads at the end of it?"

Here, in a very feeling pathetic address the government is called upon not to sacrifice the victims in their possession, because they were not the heads of the conspiracy, but as expressed in this paper, a few threads at the end of it.

Gentlemen, I could wish that such feeling and compassion had come upon the prisoner at an earlier day; that he had revolved in his mind the train of calamities inseparable from civil war and internal commotion, and that he had a little adverted to the possibility of punishment, before he had indiscreetly provoked the commission of the crime.—I could wish he had reflected sooner, and by heading that furious mob, which led into Thomas-street, more human blood had been sacrificed, than could be shed by this commission, were it to sit for a year—three times a greater number of his rebel friends sit upon that fatal evening than has been sacrificed to the offended justice of their country.—But how shall I speak of the loyal and unoffending? that rebellion lasted but a few hours, and within that short period, it deprived our country of more virtue, than the commission could strip it of were its administration to be eternal.

I do, however, sincerely lament, with him that some of those who have been hitherto brought to justice, were, comparatively speaking, insignificant persons: they were not, admit, prime movers of the treason; but I trust, the commission may not pass over without some distinguished examples.—It is certainly of much greater importance that the web itself should be cut, than that we should merely take a few threads from the end of it: but it will be found absolutely necessary that both should be done. The unhappy instruments, as well as their principles, must share for the mischief they have committed.—For though it is true that there would be no rebellion if there were no conspirators, so it is equally true, that there would be no conspirators, if there were no instruments to work with. If perpetrators were not easily supplied, and if some unhappy people were not too ready to connect themselves with the avarice and ambition of others, treason could not be harboured for a moment, even in the most heated imagination; and therefore, examples among the lower orders are as necessary sacrifices to justice, as the first conspirator in the land. But I acknowledge the former move to the scaffold with different feelings and an easier mind. The man who by his schemes has forfeited his own life, and sacrificed the lives of others, is doubly guilty, and at the awful moment of retribution must labour under accumulated remorse.

Gentlemen, I have upon all former occasions felt a considerable anxiety, that my warmth which may be induced by the discharge of my duty, should not lead me to ex-

ceed it. I have pressed upon every successive jury, mildness, clemency, and moderation. I am sure, in those feelings you anticipate any recommendation of mine. I request, that nothing which has fallen from me, and which I have stated only with the view of making the mass of evidence intelligible, may have any other operation.—My statement is merely intended to make you more readily understand that evidence which shall proceed from others, not to make any impression itself.

If I have said any thing to incite within you an additional indignation against the crime, I am not sorry for having done so; but I do not mean in expressing my horror of the crime to prejudice the criminal; on the contrary, in proportion to the enormity of the offence should the presumption be that he has not committed it. I must also request, if you have heard before this day of the prisoner's name, that you will endeavour to forget it; the vague and uncertain rumours of popular misrepresentation should be entirely forgotten—that which may have been matter of idle conversation, should not work against the prisoner at the awful moment of trial. You have the life of a fellow subject in your hands, and by the peculiar benignity of our laws, he is presumed to be an innocent man, until your verdict shall find him guilty. But in leaning against a bias you must not take a direction the other way: if upon the whole we shall lay such conclusive evidence before you as no human mind can resist, you will be bound to discharge your duty and find the prisoner guilty. But in the investigation of that evidence every former feeling of your minds must be discharged—listen with attention—give the prisoner the full benefit of any defence, which he may make, and dispassionately consider the nature of his vindication. But on the other hand, gentlemen, you have a duty to discharge to your king and to your country.—Many victims have fallen, who undoubtedly may not, abstractedly taken, have incurred any very considerable proportion of guilt,—men who, incapable of deciding for themselves, have been absorbed in the guilty ambition of others; but, if it shall appear, that the prisoner was the prime mover of this rebellion, that he was the spring which gave it life and activity, then I say, no false feeling of pity for the man should warp your judgment, or divert your understanding. I know the progress of every good mind is uniform; it begins with abhorrence for the crime, and ends with compassion for the criminal; I do not wish to strip misfortune of perhaps its only consolation.

But it must not be carried so far as to interfere with the administration of public justice. It must not be allowed to separate punishment from guilt; and therefore, if upon the evidence you should be satisfied that this man is guilty, you must discharge your duty to your king, to your country, and to your God. If on the other hand nothing shall

appear sufficient to affect him, we shall acknowledge that we have grievously offended him, and will heartily participate in the common joy that must result from the acquittal of an innocent man.

Joseph Rawlins, esq. sworn.—Examined by the Attorney General.

Are you acquainted with Mr. Robert Emmet, the prisoner at the bar?—I know him.

Pray, sir, do you recollect seeing him about Christmas last?—I do recollect seeing him some time in the month of December last, before his father's death.

Had he been long in Ireland, or did you collect from him that he had been long abroad?—I understood from him, that he had been to see his brother in Brussels.

Joseph Rawlins, esq. cross-examined by Mr. Burrows.

Did you understand that from himself?—Yes, from himself.

You had conversations with the prisoner shortly after his return?—Yes.

Had you many?—No. I had conversations with him shortly after (as I understood from him), his arrival at Brussels, at the time his father was dying.

Did it turn upon continental politics?—Yes: he said the inhabitants of the Austrian Netherlands execrated Buonaparte's government.

Did you not from the whole of the conversation collect, that he highly condemned that government?—It certainly made that impression upon my mind.

George Tyrrell, esq. sworn.—Examined by the Solicitor General.

I believe you are an attorney?—I am.

Are you acquainted with Mr. Rooney?—I am.

Where does he live?—No. 62, South Great George's-street.

Were you ever employed by him to prepare a lease to any person?—I was.

To whom was the lease to be made?—To Mr. Robert Ellis.

Of what premises was the lease?—Of a house and land in Butterfield-lane, near Rathfarnham.

Did you prepare the lease?—I did.

Did you go to any place to have it executed?—I went to the house to see it executed.

Is that the lease?—[producing a lease to the witness.]—It is.

Did you see it executed?—I did.

Are you a subscribing witness to it?—I am.

By whom was it executed?—By Robert Ellis.

Do you see that person in court?—I do; he is the prisoner at the bar.

Did he execute that lease in your presence, in the name of Robert Ellis?—He did.

Who was the other witness?—William Dowdall.

Had you known him before?—I knew his name and person, but was not acquainted with him.

Where did you go to have the lease executed?—To the house itself.

Whom did you see there?—Mr. Ellis, Mr. Dowdall, and another person, sitting at dinner.

Was that in the house demised by the lease?—Yes, it was.

Did he execute the lease there?—Not immediately. He went from that to the house of Mr. Frayne, which joins the premises, and there the lease was executed.

You say that Mr. Dowdall's person was familiar to you?—It was.

What part of the country did he come from?—He lived near Mullingar.

And you are a native of that country?—I am.

Did you know any thing respecting Dowdall before?—I heard —

Mr. Burrows.—You cannot give evidence from hearsay. The witness must speak from his own knowledge.

Lord Norbury.—No doubt he must, his hearsay is not evidence.

Mr. Solicitor General.—My lord, I did not intend to offer such evidence. I had interrogated the witness as to his knowledge, and finding he can only answer from hearsay, I do not press the question. At what time was the lease executed?—In the month of June.

Was it executed the day it bears date?—It was.

Had you ever seen the prisoner before to know what his name was?—No.

George Tyrrell, esq. cross-examined by Mr. Mac Nally.

Did you ever see the prisoner before?—No.

You never saw Mr. Ellis since?—Not by the name of Ellis.

Michael Frayne sworn.—Examined by Mr. Plunkett.

Had you been executor to a person of the name of Martin, an attorney?—He appointed me an executor, but I never acted.

Who was the other?—James Rooney, a brush-maker, in Great George's-street.

Had Martin any house or property to be disposed of?—He had.

Where situated?—In Butterfield-lane, near Rathfarnham.

Do you recollect any application by any person for taking it?—I do.

When?—I believe upon the 21st of April; I was going through George's-street, and stopped at Rooney's door. He told me he had a gentleman in the parlour.

Mr. Burrows.—I must object to the witness stating any conversation with Rooney.

Mr. Plunkett.—Did you go into the parlour?—I did.

Did you see any one there?—I did, a gentleman who went by the name of Ellis, whom Mr. Rooney introduced me, and so he was to be my neighbour.

What passed?—Mr. Rooney said he was after getting sixty-one guineas fine, and the gentleman was to pay sixty-one guineas a year.

Look about, and try if you see that person.—That is the gentleman [pointing to the prisoner.]

You have no doubt that is the person?—Not the smallest in the world.

Was that the gentleman who paid the sum of sixty-one guineas?—That very gentleman there was no other present.

You live in Butterfield-lane?—Yes.

Did you get any direction about giving possession?—Yes, as I was upon the spot, I desired to give possession to any one who should come from Mr. Ellis. Upon the 21st a servant came to me from Mr. Ellis, with a note; but I do not recollect, whether a note was from Mr. Rooney or Mr. Ellis, who walked over to the place and gave the servant possession.

You live near the place?—Very near.

Had you any opportunity of seeing the conduct of that person afterwards?—Mr. Ellis did not come for a fortnight after the servant had got possession, there were women making up the fences and doing other things; it was a fortnight after that I saw him there.

Did you see any other person there with him?—I did.

Did you know them?—Only one, who signed his name, Dowdall; there was another person there, but I do not think I could know him. They kept themselves in such a manner that they did not make free with the door did I think proper to be free with them.

About how long did the prisoner continue to reside there?—As near as I can estimate or consider, not more than two months; in June the lease was executed; he came a fortnight after the agreement was made, which was the 21st of April, and I did not see him for a fortnight before the breaking out of the disturbances.

He got possession before the lease was executed?—He did.

Had you an opportunity of making any observation upon the manner in which these two persons lived while at Butterfield?—They lived very quiet; no noise, nor drink; he lived in a sequestered manner, as if they did not wish to see any people.

Did they live constantly there?—I met them very often on the road, going to town, though I did not speak to them, as they did not make free with me.

Did you see how the house was furnished?—Only the day the lease was executed. The attorney called upon me and asked me, what kind of people they were? I said, I did not

know; that they were an odd sort of people: we went there to have the lease executed; we rapped at the door, and the servant said, her master would come down; we walked into the garden, and Mr. Ellis came down. Mr. Tyrrell said he had the leases in his pocket, and as he was going circuit, he wished to have them executed. Mr. Ellis brought them into the parlour, where were two other persons at dinner; they asked us to dine; but there being no chairs, we felt a little awkward, and I said I had dined, and that Mr. Tyrrell was to go to town. I brought Mr. Tyrrell over to my house with Mr. Ellis; there the leases were executed.

Michael Frayne cross-examined by Mr. *Burrows*.

Have you often seen Mr. Dowdall?—I have.

Did you ever hear him go by any name but that of Dowdall?—I never heard his name but on that day; he was with the prisoner back and forward.

Mr. *Emmet*.—Did you ever see Mr. Dowdall lie there?—I do not know whether he did or not; I never saw him in a bed-room.

Mr. *Plunkett*.—Can you tell whether Mr. Emmet slept there or not?—I cannot, only one morning I called there with Mr. Rooney, and the maid said he was not up.

Mr. *Burrows*.—You considered Mr. Emmet as the inhabitant of the house?—I did.

Did you ever see any parties there, to dinner or for any other purpose?—No, I never saw any party there of any kind.

John Fleming sworn.—Examined by Mr. *Mayne*.

Pray, Fleming, where did you live in the last year before the 23rd of July?—At Dillon's, the White Bull.

Where is that?—In Thomas-street.

A public house, I believe?—Yes.

Were you in any employment there?—I was ostler, sir.

What countryman are you?—County Kildare man.

About how long had you lived at Dillon's?—From harvest last.

Do you know the lane called Mass-lane, or Marshalsea-lane?—I do.

Is it convenient to Dillon's house?—Dillon's yard reaches to Marshal-lane; getting the cars in is from that lane.

From what street, to what street does it run?—From Dirty-lane up to the Marshal-sea.

Were you ever in any particular house or store in that lane?—I was in that store; the dépôt as it is now called.

It opens into Marshal-lane?—Yes.

And part of it is next Dillon's premises?—Yes.

How came you to be there? did you know any people there?—I did, different people, more than I can mention at present.

Were you in confidence with them?—I was so far in confidence with them that I brought them ammunition and other things; I obeyed the orders of my master, and he desired me to do what they bid me.

Then you brought several things there?—There were several things brought through our yard, and some from Dirty-lane.

About how long were you in this store before the 23rd of July?—I cannot say; I knew it a few days after it was taken from Mr. Coleman; I was told first it was for a timber-yard, but afterwards I was told the business it was for.

Were you often in it before the 23rd July?—Sometimes three or four times a day, sometimes once or twice a day, sometimes to the door. Of a day I had a throng I did not communicate with them.

They knew you were a person who had permission to go in there?—They knew I had liberty to go in or out without asking me any questions.

What did you first see there?—First, making pike handles; secondly, heading them.

With the iron part do you mean?—Yes.

Mr. *Burrows*.—My lord, I must object to this evidence as not affecting the prisoner at the bar.

Mr. *Mayne*.—We will connect it with the prisoner at the bar, at present we offer this evidence as showing a conspiracy and preparations made for it.

Lord *Norbury*.—As proving a general conspiracy, it is admissible evidence; and I hope the trial will not be embarrassed by objections that do not bear argument; the constant practice is first to prove a general conspiracy; and then to show the prisoner connected with it.

Mr. *Mac Nally*.—In Hardy's case the acts of the prisoner were first proved, and then they gave evidence to show the extent of the conspiracy.

Mr. *Mayne*.—Did you see any other kind of arms in that store-house besides pikes?—I saw blunderbusses, firelocks, and pistols.

About how long before the 23rd of July, might you have seen them?—I saw some shortly after they took the place first.

Can you tell how long before the 23rd of July they took the place first and began to store it?—I cannot say.

Was it a quarter of a year?—It was more than a quarter of a year they took it.

Did you see many of the blunderbusses, pistols, and firelocks brought there?—I did.

Did you see any thing done with any ammunition?—I saw them making cartridges.

Was there much of that?—They made a great deal of them, more than I can describe.

Court.—What kind of cartridges?—Ball cartridges.

Mr. *Mayne*.—Look at the prisoner at the bar?—I know him, Mr. Emmet there.

Have you seen him before?—I have.

When did you see him first to know him?
—The Tuesday morning after the blowing up in Patrick-street.

Was there an explosion there?—So it was mentioned, there was a man blown up there.

Was that the first time you saw him?—The first time to know him.

That was a week before the 23rd of July?
—I cannot say.

Where did you see him?—In the lane; I opened the gate of the yard to let out Quigley, and he met Mr. Emmet and Palmer.

Where did he go to?—Into the store.

The place you have been describing?—Yes.

Court.—Who went into the store?—Palmer went away to send in ammunition, and the others went in.

Mr. Mayne.—How do you know it was for ammunition?—They asked me for three sacks.

Was the prisoner present?—He was; I told him they had got sacks before which were not returned: that I was accountable for them, and got them only from people who had corn and other things.

How did you know it was for ammunition?
—I was told of it.

Was the prisoner present?—He was.

What was said?—They said the ammunition was removed from Patrick-street to another place, and they went to remove it and have it examined at the store.

Did you see the prisoner after that morning in the store?—I did.

Did you see him often?—Mostly every time I went in I would see him.

Were you there every day?—Mostly every day, and sometimes three or four times a day; I saw him every day either in the store or at Dillon's.

When you saw him in the store, did you see him do any thing?—From the instant he came in, they would not do any thing without applying to him.

Then he directed the business which was going on?—He did.

He knew of the making of the pikes and other things?—He was the head man of it: he gave directions to Quigley, and he to others.

Did you know any thing of that Quigley before? or what situation of life was he in?
—I never saw him, to my knowledge, till I saw him there.

What line of life was he in?—I was told—

Mr. Burrows.—I object to the witness stating what he was told, unless it was in the presence of the prisoner.

Mr. Mayne.—What was the general account or reputation of his trade? did you happen to hear it mentioned in the presence of the prisoner?—In the presence of Mr. Emmet? No; I never heard Quigley mention it in his presence.

Did you hear any thing read in the store?

—I heard a little sketch; I did not take much notice of it.

Who read it?—Mr. Emmet.

What was the purport of it?—That every officer, non-commissioned officer, and private, should share equally every thing they had and have the same laws as in France.

What was it they were to share?—What they got when they were to take Ireland, Dublin.

Did you see any uniform clothes made there?—I saw green jackets making.

In that store?—Yes.

Who was making them?—Different trades.

Can you name any of them?—Yes; we was one Colgan.

You need not mention any others; I saw him there?—I did.

As I understand, you were permitted to hear and see every thing going on?—I was.

Did you hear what these uniforms were for?—I suppose they were for officers and non-commissioned officers.

Did you see any particular uniform?—I did.

What sort was it?—A green coat with epaulettes.

Was there much lace?—There was on the sleeves and the skirts, and there were epaulettes, like a general's dress.

Did you see any person do any thing at it?—The prisoner took it out of a desk, and showed it to us all there one day.

Where was that desk?—In the store.

Whereabouts?—In the first loft.

What did it stand upon?—I cannot say whether upon a frame or some boards.

Look at this [showing a desk, which was put upon the table], was it like this?—It was the same; to my opinion this is it.

You saw the prisoner take out of the desk there, and which you think is this, the uniform you described?—I did.

About what time before the 23rd of July did you see him take it out first?—I cannot rightly say.

Was it a week?—It was a few days.

Was there any other desk or thing of the kind in the store but one?—I never saw but the one.

Were you much through the store?—I was in every part of it, and there could not be a desk in it unknown to me.

Did you see Mr. Emmet do any thing at the desk besides taking out the uniform?—Not with regard to uniforms.

But did you see him do any thing else there?—I saw him take out papers, and put papers into it.

Did you see any other person go to the desk?—Quigley did.

Was there any other?—Not to have any thing to say to it.

Did you at any time see there persons having the appearance of soldiers?—There were two men; I was informed by themselves they deserted from the barracks.

Were they received there?—They were.

Did they stay there?—They did.

Were you in that store upon the evening of the 23rd of July?—I was.

Did you see the prisoner there that day?—I did.

Did you see him in any particular dress that evening?—I saw him when he dressed himself in his uniform.

What uniform?—The green coat with gold epaulettes.

Did you observe the rest of his dress besides the coat?—Yes: I observed he had a white waistcoat and white pantaloons, and a pair of new boots.

Did you observe his hat?—He had a sword, and a hat and white feather.

Was it a round or a cocked hat?—It was a cocked hat; an officer's hat.

Can you say whether he had any sash on?—He had a sash on?

Had he any other arms but the sword?—He had a case of pistols.

Court.—What colour was the sash?—I can't say; because it was only by candle light I saw him dressed.

Mr. Mayne.—Did you hear him use any particular expression that evening when he was dressing?—Yes: when he was dressed, he asked for a big coat.

Did he say for what purpose?—He said it was to disguise his uniform till he went to the party that was to attack the castle.

Did you see any other uniform of this particular kind with gold lace, except the one which the prisoner had?—I did.

How many?—Quigley and Stafford had uniforms of that kind; but only one epaulette. Quigley had a white feather, and Stafford a green one.

Did you know Stafford?—I did.

What was he?—A baker in Thomas-street.

Were there many people of that party working at the pikes, making cartridges, bringing in arms, and receiving orders?—There were a good many.

How many do you suppose there were upon the 23rd of July?—More than I can mention.

How many do you think?—There were fifty men, as far as I can judge, in the dépôt.

Were there more at that time than upon any former evening?—A good many.

Did they get any arms there?—They did; pikes, pistols, blunderbusses and fire-locks, and ammunition according.

Did they get them that evening?—They did.

Did they take them out of the store?—They did.

To what place did they go?—Towards Thomas-street.

Did you see the prisoner going out, or afterwards?—I saw him at the door; he drew his sword and called out, "come on boys," and his attendants did the same.

About what hour do you think that was?—As close as I can guess, it was nine o'clock.

Was it dark, or was it growing dark?—The lamps were lit.

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Pray did you see, which way the prisoner went? Did he go with the party?—He did.

Which way did you see them go?—I was with them myself. We went into Dirty-lane and up to Thomas-street, and they began to fire.

Were you there when that began?—I was.

Jury.—You say, when they got to Thomas-street they began to fire.—As soon as they got into Dirty-lane they began to fire.

Was Mr. Emmet with them then?—He was in the centre of them.

Mr. Mayne.—What name did he generally go by in the stores?—The first name I heard was Mr. Ellis.

Did he answer to that name when spoken to?—I never heard him called any other name.

Did you hear him called by that name?—I did.

In the course of the time you were there did you hear any thing among the people about their mode of proceeding, the time, or the notice of it?—The most particular in that respect which I heard was, that they were making preparation to assist the French when they would land.

As I understand, it was given out there, that the French were expected?—Undoubtedly it was; I was told so.

In the store?—Yes; and out of the store.

Did you hear the prisoner called by any name of rank or title?—I was often told he was to be the *general*, or head of the business.

Did you hear that style given to him?—I did.

John Fleming cross-examined by *Mr. Burrowes.*

I believe you had been frequently in these stores, before you ever saw the prisoner?—I was.

And you said that all persons you found there readily admitted you?—They did.

Were there many persons there before you saw Mr. Emmet there?—There were some; one in particular that I knew.

Was there many, whether you knew them or not?—I cannot say; I did not know their names.

Did you know what all these military preparations were for?—At the time I went in? Yes, I did.

Did you make any discovery of your knowledge of it in order to prevent it?—Never, while the preparation was going on, I never did.

When did you first give any information?—I cannot rightly tell.

Was it after the 23rd of July?—It was.

How long after?—I cannot well inform you.

Was it a week or ten days, or more?—It was near a month I believe.

Were you taken prisoner under a charge of being guilty of high treason?—I was taken under suspicion of being in that rebellion that night.

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Where were you taken?—At Ballinderry, in the county of Kildare.

Are your wounds healed?—Yes, they are.

Were they at the time you were taken?—I never got the least wound, but a little scratch upon the leg.

When did you get that?—In the night of the 23rd.

After the party quitted the depôt?—Yes.

Upon your oath have you been promised any pardon in consequence of making discoveries?—I have not been promised any thing. I gave myself up to government to become a good subject.

Do you expect to be prosecuted?—I cannot say.

What do you believe?—To the best of my opinion, I cannot say.

On your oath, do you not think that you would be prosecuted, if you did not give information?—If there would be evidence against me, surely I would be prosecuted.

On your oath did you give the information you did, from a horror of the rebellion, or in hopes that it would be of service to yourself?—I gave it from a horror of the rebellion.

And not from an expectation of being benefited thereby?—I never expected any thing; only in regard of government I gave information.

In order to benefit the government?—Yes. I had no interest in it.

Was that your only motive, merely to serve government, and not yourself?—To serve government, and from a horror of the rebellion.

You say that Mr. Emmet put on a great coat to hide his uniform?

Mr. *Mayne*.—I beg pardon, the witness did not say that. He said, that Mr. Emmet asked for one.

Mr. *Burrowes*.—Did he get a great coat?—No, he did not.

Court.—What name did Quigley go by?—Graham.

Terence Coghlan sworn.—Examined by
Mr. *Townsend*.

What is your trade?—I am a tailor.

Do you recollect the insurrection which happened in Dublin upon the 23rd of July?—I do recollect to hear talk of it.

Do you recollect the Sunday before that?—I do.

Where were you upon that day?—I came into town that day.

Do you recollect meeting any person in Queen-street?—Yes, a friend of mine who brought me to drink.

To what house?—To Thomas-street, to a house I was since told belonged to Mr. Dillon.

Did you drink there?—I did; a good deal. Is it a public-house?—I believe it is a carman's inn.

Do you know the ostler?—I do, John Fleming.

You drank a great deal, you say?—I did. Were you completely drunk?—I believe I fell asleep.

Where did you find yourself when you awoke?—The next morning I found myself in a place I never was in before.

Was it day light?—It was.

What place was it?—A large out-house full of arms and poles.

How were the poles placed?—Some against the wall, and some were lying down.

Were there any spikes to the poles?—There were.

Did you see any people there?—There was a number.

Were you asked to do any thing?—I was set to work to make white pantaloons and green jackets.

Look at the prisoner at the bar. Did you see him there?—I did.

How did he appear among them?—Indeed he seemed to be the chief in it.

Did you hear him give any orders?—I think he did; it was by his directions every thing was done in it.

Did he see you at work?—Yes, he did.

Where did you commonly work while you were there?—At first I worked in a place of it, where there were some mattresses, and then I was removed to another floor.

Did you see any desk there?—I did.

How many?—I do not recollect more than one.

Look at this?—I did not take so much notice as to swear to it.

Was it like this?—It was.

Did you ever see Mr. Emmet go to the desk?—I did.

What was he doing at it?—Taking things out, but I not recollect what.

Did you ever see him write there?—I think I did, but I have a bad recollection.

Did you see any arms there besides pistols?—Yes, I did; I saw blunderbusses and pistols.

Did you see any muskets?—I saw two soldiers muskets, brought there by two deserters as I was told there.

Did you see Fleming, the ostler, there?—I did.

Of what sort of cloth were the jackets and pantaloons made? was it coarse or fine?—Coarse cloth.

Do you recollect the name by which the gentleman now upon his trial was called there?—I do not.

Did you hear in that place for what purpose these preparations were making?—I believe I did, but I cannot particularly say.

How near was that house you were in to Dillon's inn?—The next door.

The back yard?—I think so.

Terence Coghlan cross-examined by Mr. *Mac Nally*.

Where do you live when you are at home?—In Lucan.

Do you live at home at present?—No.

Where do you live now?—In the Tower.

Do you swear that?—No, I am now upon the bench.

Was it accident that brought you to town from Lucan?—No, it was not; I came upon business.

Honest business, I suppose?—I came upon honest business; I came to town to counsel-lor Vicars to get work.

Does he live in Thomas-street?—No, he lives in Holles-street.

Then what brought you to Thomas-street?—A friend of mine.

Do you not believe that your friend was a great rogue?—He was a great foe to me.

He was a great rebel?—I believe so.

Had he no suspicion of your being from Lucan?—I cannot say.

What, did you get drunk without speaking together?—We said a great deal, I suppose, but I do not remember it.

You recollect that you fell asleep?—I do.

When you awoke in the depôt, did you think that you were dreaming?—I did not know rightly where I was.

When you awoke did you find yourself working?—No.

When, then, did you go to work?—I cannot say.

Was it by day-light or candle-light?—By day-light.

Was there no candle there at any time?—There was not.

Do you know Fleming?—I do.

Is he as honest as yourself?—I suppose so.

If he said he saw candles there, would he swear true?—I cannot say; he had more recourse to the place than I had.

Could there be a candle there without your seeing it?—There might.

You said you saw the prisoner there; will you swear it was Mr. Emmet you saw, and not another person?—I saw Mr. Emmet there, but I will not say that I did not see another person there.

Did you think yourself in hell when you awoke?—I would rather be out of it.

Where did you go when you got out?—To counsellor Vicars.

Where were you taken?—In Lucan.

Did you tell what you saw to Mr. Vicars?—I did not.

He would have gone to a magistrate?—He would.

And prevented much mischief?—I believe so.

How came you to be taken?—I cannot say.

Was it because some person gave information against you?—I suppose so.

And then you recovered your speech and gave information?—Yes.

Were you sworn to it?—No.

Were you never sworn till you came upon the table?—No.

When did you give information?—Some time last week.

You heard of the rebellion, of the murders which were committed, and the mischief which was done, and never recollected or mentioned you were in the depôt until you were taken?—No.

Would you have given information till the day of judgment, if you had not been taken?—I believe not.

Was it for the sake of public justice that you gave information?—It was for the sake of my family.

How, for the sake of your family?—To recover my liberty to earn bread for them.

But you would not have told any thing of the matter if you had not been taken?—No.

Jury.—Do you believe you fell asleep in the depôt, or were you carried there while you were asleep?—Indeed, I believe I fell asleep there.

Patrick Farrell sworn.—Examined by Mr. Mayne.

Do you remember Saturday night the 23rd of July?—I do.

Where did you live before that time?—I lived with Mr. Ormsby, in Thomas-street.

What business does he follow?—A grocer.

What was your business?—Steward to him.

Do you remember any thing particular happening to you on the Friday night before the 23rd of July?—Nothing particular happened; but I was passing by that night upon business of my master's. I passed through that lane where the depôt was afterwards found.

About what time?—Between nine and ten o'clock.

You know where that store of arms and ammunition was found?—I do.

What lane is it in?—In Marshal-lane.

Did you stop there?—At no place but at that very place.

What place?—That malt-house. I heard a noise in it; and thinking it was a waste-house, I was surprised.

What happened there when you stopped?—I was not over two minutes there, when a man opened the door and caught me, and asked me what I was doing there?

What was done with you?—I was brought in.

Were there any other people there besides the man who brought you in?—There were.

How many as you can tell?—Between fourteen and fifteen, as near as I can guess.

Were you kept there?—I was asked what brought me there? or was I ever there before? I said, I was not. They asked me, did I know Graham? I said, I did not; they asked me, what brought me there? I said, nothing, but that I was going by and heard a noise; one of them said I was a spy, and called "*Drop him immediately.*"

What did they mean by that?—To shoot me, as I thought. They brought me up stairs, and after some consultation, which I could not hear, they agreed to wait for some person to come in.

They asked you, did you know Graham?—Yes.

Did any person come afterwards?—Yes, a person came in about half an hour.

Did the person whom they agreed to wait for to decide upon you come in?—Yes, he did.

Did he question you?—He asked me, did I know Graham? I said not; at the same time a light came in, and I looked about me, and was asked, did I know any body there? I knew Quigley, and said I knew him. I was asked, where? I said, about five or six years ago at Maynooth, as a bricklayer or mason.

You knew him?—I did, and I understood he was the person who went by the name of Graham.

How long were you kept there?—From that time till about the same time next night.

Then the person who came in decided for you, and you were not dropped?—He ordered me into care, and desired me not to be let out.

Look at the bar?—That is the gentleman who came in [pointing to the prisoner].

Are you sure that is the gentleman who came in and decided for you, that you were not to be killed?—I am positively sure.

You say you were kept the whole of the next day. Did you see him often that Saturday?—At different times in and out.

Did you see him take any part?—I did see things done by his directions in it.

Did you see him often that day?—I did.

You say you were kept a prisoner?—I was till near nine o'clock, when I was set to work about the house among the rest.

What did you do?—The first thing was to take in boards from off a car.

Was any use made of them?—I saw them made into cases, and pikes put into them.

How do you mean made into cases?—The boards were nailed together, and pikes put into them.

Did you observe were there many?—There was.

Were any sent out while you were there?—There were.

Can you describe more accurately, for the jury, what the cases were?—They were made of the outside slabs of a long beam, taken off about an inch or something more thick; four or five inches at each end of the beam was cut off; the slabs were nailed together, and these pieces put in at the ends, so that it appeared like a rough plank or beam of timber.

Were they filled with pikes and sent out while you were there?—They were.

Did you see any pikes that were not put into the cases?—A great number, more than I could reckon, piled up standing against the wall and lying down.

Did you see any other kind of arms?—I did, blunderbusses and pistols.

Were there more persons there in the course of Saturday, than there had been on Friday?—There came a good many in and out, most of them country people.

Had you attempted to escape during the day?—I could not get near the door, so would I be let.

Did you see any other things there calculated for mischief besides what you mentioned?—I saw boards with nails driven through them up to the head.

Did you understand the use of them?—I heard them express, that they were to arm the cavalry, by throwing them into the street.

Did you see any bottle machines?—I did there were small bottles, like thumb bottles covered with shot, and linen and clay, as there was powder within side.

Did you see any other?—I did, larger ones with balls and linen or canvass tied over them and clay also.

Did you see any chains?—I did.

Were these things seen by you while the prisoner was there?—He was in and out.

What were they doing with these things?—I was obliged to do something to them myself; I was brought up and was obliged to fill tubes with powder and put it into the bottles.

Who commanded or gave directions there?—All the directions I heard were from the gentleman at the bar. When he was absent others gave directions; but I understood they were from him.

Did you see any beams of timber there?—I did, with hollow tubes like through them, and a three inch diameter hole bored at the top into which powder was put. The tube was also filled with powder, and the stones were put on the top to keep it down.

Did you see many of them?—I saw three or four at any rate.

Did you see any clothes?—I saw green clothes.

Any cartridges?—I did; ball cartridges and flints.

Did you see any particular uniforms?—I saw three men in the evening dressed in green uniforms.

Was that upon Saturday evening?—It was.

What was there particular in the uniforms?—This gentleman present wore two gold epaulettes; the other two men but one each. He had also a cocked hat, a sword and pistols.

Was there gold lace upon any part of the coat?—There was lace upon the button holes and sleeves.

Were there more people there in the evening than there had been in the morning?—Towards evening they were gathering pretty smart into it.

How did you get away?—On that evening, when they were carrying away one of these large beams, I was called down to assist, and then I made my escape.

Did you get away before they went to work that evening?—They were just going out; the pikes were thrown out, and one of these beams was put upon a car which was going off.

How did they throw down the pikes?—From the first floor of the warehouse above

the ground, they let them fall down with the spikes uppermost.

About what hour did you leave them?—I think about nine o'clock; lord Moira's bell had just rang.

Patrick Farrell cross-examined.

Mr. Mac Nelly.—My lords, I did not intend to ask any questions of this witness in the way of cross-examination; but at the express desire of my client, I shall be excused in putting such questions as he suggests to me; and which will be considered as coming directly from him. You say you saw Quigley?—I did.

The prisoner wishes to know, what business he is?—I do not know what he is; but he was employed about Maynooth as a mason. I knew him, and remember him well, and cannot be mistaken.

Did you see Dowdall there?—If I did, I did not know him.

How many people did you see there who appeared to be active men, having command in different situations?—There were a good many, and every man very hearty in the business.

Did many go in and out, who had no residence in the place?—There did.

What appearance had they?—Some of them country people, and some like citizens, and some well-dressed people.

Were there any like esquires?—I cannot say.

Were you not well fed while you were there, and treated with lenity and humanity?—Middling.

You had the same allowance as others?—I had a little milk.

Any meat?—Not a bit.

Any beer?—No.

Whiskey?—No.

Any bread?—Yes.

Was it cold?—It was not very warm.

Did you hear any printed paper read?—I did; part of it only.

What did it state?—I cannot recollect it all now; but it appeared to me as if the man reading said, that nineteen counties were ready to rise.

Was any thing said about the French?—Not the smallest, as I heard: they said they had no idea as to French relief; but to make it good themselves.

Do you recollect, that any person objected to the paper when it was read, or that any observation was made as to its being proper or improper?—The observation I heard, listening like another, was, that it was very good.

Was there no observation of any other kind?—No.

Did you hear any person object, that the paper was too merciful?—No, I did not hear it.

Court.—How soon after you saw this, did you give information of it?—Sunday morning, at eleven o'clock.

Was that the next day?—Yes.

To whom?—To my master.

Colonel Spencer Thomas Vassal sworn.—Examined by *Mr. Townsend*.

Do you remember the 23rd of July?—I do; I was field-officer of the day.

In the course of your rounds, I understand you went to Marshalsea-lane?—Yes.

Did you find that paper there? [showing him the small proclamation, addressed to the citizens of Dublin.]—I did, and many others; I took twelve of them, quite wet: this one had never been out of my possession till I gave it to you.

How long did you remain there?—About a quarter of an hour. I left directions with major Greville, not to allow any person to go in; for there was great danger from the quantity of loose powder, and I am surprised it was not blown up before I got there.

You sent the articles which were found there to the barracks?—I did; with a party to attend each load.

Did you see any desk in the dépôt?—I saw such a desk as this.

Court.—At what hour were you at the dépôt?—Between three and four o'clock in the morning of Sunday. It was considerably after day-light before I was permitted to go my rounds.

[Not cross-examined.]

Frederic Darley, esq. and Alderman, sworn.
—Examined by *Mr. Townsend*.

Do you recollect the night of the 23rd of July?—I do.

Do you recollect having been in the dépôt in Marshalsea-lane?—I do.

Did you find that paper there?—I did.

[This was a paper directed to *Robert Ellis*, *Butterfield*.]

Did you find this paper there? [showing him another; *this was the Treatise on the Art of War*.]—I saw several other papers there, this was one of them; it was handed to captain Evelyn.

Did you mark it?—I did not.

[Not cross-examined.]

Henry Evelyn, esq. sworn.—Examined by *Mr. Townsend*.

Were you in the dépôt on the night of the 23rd of July?—I was there on the morning of the 24th, before the things were removed. I went there for the purpose of taking them out of the dépôt.

Look at this paper [showing him a paper, —*this was a manuscript draft of more than half of the large proclamation, altered and interlined in some places*.] Did you find that there?—I did.

[Not cross-examined.]

Robert Lindsay, soldier, sworn.—Examined by *Mr. Townsend*.

Do you remember the night of the 22nd of July?—I do.

Were you at the dépôt?—I was employed the next morning in taking things out of it.

Do you know that desk? [pointing to the desk which had been shown to the other witness, and which remained upon the table in court.]—I do. I put it upon an artillery car. There was a piece knocked off it here, by which I know it.

Where was it taken from?—It was handed down to me from the upper part of the dépôt.

What was done with it?—It was carried to the barrack with the other things found there.

[Not cross-examined.]

Michael Clement Frayne.—Do you remember Sunday the 24th of July?—I do.

You were quarter-master serjeant of the 38th regiment?—Yes.

Did you receive any things which were brought to the barrack that day?—I did.

Was that desk brought to the barrack that day?—It was.

Was it given to you in charge there?—It was, by colonel Vassal; it was put into the magazine, and the other articles which arrived after were put over it.

Was the magazine locked?—It was.

Who kept the key of it?—I had the charge, and kept the key.

Did you open that desk afterwards?—On the Monday after I opened it.

Do you recollect any difficulty you had in getting at it?—I got two pioneers along with me, having a curiosity to examine it: we were a considerable time before we could get at it, through the heap of other articles.

Did you find any paper in it?—I found this letter in it.

[This was the letter signed "Thomas Addis Emmet," directed to "Mrs. Emmet, Milltown, near Dublin," and beginning within-side "My Dearest Robert."—It had a foreign post-mark.]

[Witness not cross-examined.]

Edward Wilson, esq. sworn.—Examined by *Mr. Plunkett*.

You are a peace-officer in the city of Dublin?—I am chief peace-officer of the workhouse division.

Do you recollect the 23rd of July last?—I do.

Do you recollect any explosion which took place before that?—In consequence of an explosion, I visited a house in Patrick-street.

What day was it?—The 16th of July; I found preparations for making powder, and I found pikes, and pike-handles there.

Now *Mr. Wilson*, proceed to state as shortly as you can the transactions of the night of the 23rd of July, as far as you saw them?

Mr. Wilson then gave the same account upon the former trials. [Vide *Kearney's* case, p. 711.]

Felix Brady, esq., sworn and examined.

He gave the same account as before of the engagement with the rebels in Thomas-street, upon the night of the 23rd. [F. 714.]

He then mentioned this additional circumstance, that upon examining the pikes which he carried away, four of them were marked with blood about the points and the caps, and one or two were marked with blood in two feet up the handle.

John Doyle, farmer, sworn.—Examined by *Mr. Mayne*.

Where do you live?—At Ballymenor, the parish of Tallaght.

How far from town?—Seven miles; it is near Old Bawn.

Were there any particular persons at the place, shortly after the rebellion broke out?—There was.

Tell the jury what day it was?—It was the 26th day of July, at two o'clock in the morning they came to my house.

You were in bed in your house?—I was; I had drank pretty heavy, and went to bed between ten and eleven; they came in; a party of people came up to my bed, and I was heavy asleep, they were stirring and waking me, and I could not waken at once. But when I looked up I saw a party of persons upon which I lay closer than before. They desired me to take some spirits, which I refused. They then lifted me over into the middle of the bed, and I gave them no assistance; they lay down, two of them, one at each side of me; one of them said "I saw French general and a French colonel here, what I never had before." Which is true enough, I never had. I lay there between them for some hours, but between sleep and awake; when I was awake, I kept them asleep, and then I felt a listening, and got up and stole out of bed, and I found some blunderbuses and a gun and some pistols.

How many blunderbusses were there?—I verily believe there was one against every man of them.

How many persons were there?—There were fourteen at breakfast.

Did you look at the persons who were in bed with you?—I did.

Look at the prisoner?—I see that young man or boy, or whatever you call him.

Was he in your bed?—He was; he passed for a French officer.

Did you hear him speak?—I heard him striving to speak.

What was it?—I cannot tell, I did not understand it.

Was it Irish or English?—It was neither.

How was he dressed?—He did not dress for some time; but afterwards when he was

going away in the evening, he put on a coat with a great deal of gold lace and tassels.

What colour was it?—It was a dark colour but I looked more at the things that were upon it, than at the colour of the cloth.

Was there any other person in such a dress?—There was one.

Were there any others besides those you mentioned?—There were two more walking about outside, while the rest were lying asleep in different parts.

What time did they go away from you?—Between eight and nine in the evening.

Did they take their arms?—They did.

How was the prisoner dressed?—He put on that coat and a great jock over it.

What were the two men doing outside?—I cannot say, if they were not watching for the rest.

Which way did they go?—They turned up the hill.

Was any paper found after them?—I found one next morning under the table they breakfasted at.

To whom did you give that paper?—To John Robinson, the barony constable

Look at this paper [showing him one of the small proclamations].—It was exactly like that, having iron-mould upon the back of it; but I cannot read.

Court.—How soon after did you give that paper to the barony constable?—The Thursday after.

Had you it safe from the time you found it till you gave it to the constable?—I had it locked up.

[Not cross-examined].

Rose Bagnall sworn.—Examined by
Mr. Mayne.

Where do you live?—In Ballynascorney.

How far from Dublin?—About eight miles.

Do you know Doyle?—I do; he worked for me some time.

How far from you is his house?—About a mile.

Did any particular persons come to your house shortly after the rebellion broke out here?—Not till the Tuesday following.

About what time of the night did they come?—Between eleven and twelve.

How many came in?—I really did not reckon them. I was told there was about sixteen or seventeen of them.

Had they any arms?—They had.

Was there any particular dress among them?—Three of them, I think, wore green clothes.

Were they ornamented?—They had yellow upon them; but I was so much frightened, I did not observe them.

Were the clothes made in a military way?—Yes, sir.

Was there anything upon their shoulders?—Yes.

Was it the colour of gold?—It was.

What arms had they?—They had some blunderbusses.

What kind of hats had they?—They had large cocked hats.

Which of them?—Those who wore green.

Did you understand from any of them what they passed for?—I heard an alarm that day that there was a parcel of men in arms at Ballymeece.

But did you hear them say any thing about their title or rank?—I heard one of them called a general.

Can you swear to any of them?—I cannot: I was so much frightened I cannot swear to any of them.

Did they sleep in your house?—They did one night.

When did they go?—About nine the next night.

You say you were much alarmed?—I was indeed, sir, being a lone woman, with some children.

[Not cross-examined.]

John Robinson sworn.—Examined by
Mr. Plunkett.

Are you a barony constable any where?—Yes.

Of what barony?—Upper-cross.

Do you know John Doyle?—I do.

Did he apply to you any time in the month of July last?—He came to me the 27th of July, on Wednesday about nine o'clock as we rode into town.

You need not state that; did he at any time hand you this paper [showing him the small proclamation]?—He did.

When?—On Thursday, at his house.

Did he tell you of it on Wednesday?—He did.

John Robinson cross-examined by
Mr. Mac Nally.

You say you got the paper at his house?—I did.

Who gave it to you?—Doyle himself, out of his own hand.

Why did not you say so at first?—I did, sir.

Joseph Palmer sworn.—Examined by the
Attorney General.

What occupation do you follow?—A clerk. To whom pray?—To Mr. Colville.

Do you reside in his house, or with any part of your own family?—I resided at a house in Harold's-cross.

With whom pray?—With my mother; I have a lodging there.

Do you recollect her having had any other lodger in the month of January or February last, or in March?—She had, sir.

Do you recollect, whether a short time since any person was apprehended in your mother's house?—There was.

Who apprehended him?—Major Sirr.

Pray did that person lodge at your mother's house any time last spring?—He did.

Pray, what name did he go by, when he first came to lodge there?—Hewitt, sir.

Was that Hewitt, the same person who was afterwards arrested by major Sirr?—Yes, sir.

Pray do you recollect when he left your mother's house last spring?—I cannot recollect.

Was it in February, March, or April?—I cannot say; it was about three months before the time he was taken.

Did he return at any time to lodge in your mother's house?—He did.

Will you have the goodness to mention when he returned before he was taken prisoner?—About three weeks or a month before he was taken.

When he returned the second time, and before his arrest, under what name did he pass?—Hewitt, sir.

Do you recollect how he was dressed, when he returned?—Yes.

Mention it?—He had a brown coat, white waistcoat and white pantaloons, and hessian boots.

What were the pantaloons made of, linen or cloth?—They were cloth.

What stock had he on?—A black stock.

During the last month did he receive any visitors at the house?—He did.

Did he ever receive more than one person at a time?—I believe he did.

By what name did they inquire for him?—By the name of Hewitt, sir.

Pray, sir, at the time he was arrested, was any label on the door of the house expressive of the inhabitants who lived in it?—There was.

Who drew it?—It was I.

Pray, sir, was Mr. Hewitt's name mentioned in that label?—No, sir.

Was that lodger who passed by the name of Hewitt mentioned by any other name, or was he wholly omitted?—He was omitted.

What induced you to omit his name upon that label?—He did not wish it to be put on.

Did you collect in your conversations with him, what his reason was for having it omitted?—Yes, sir.

Will you mention it if you please, sir?—He was afraid that government would take him up.

Pray, Mr. Palmer, did he state what his cause of apprehension was? did he speak of the transaction of the 23rd July?—He did.

Will you mention the amount of those conversations?—I cannot unless you ask me.

I do not wish to ask you particulars, because it might have the appearance of suggesting them to you, I would rather you would mention them yourself. Did he say where he passed that evening?—He said he passed part of it in Thomas-street.

Had he any conversation with you respecting the dress he wore?—He had.

Mention it?—He said he had the pantaloons and boots and waistcoat that I spoke of before.

Did he mention a coat?—He did.

What coat?—He said it was a very bad, some uniform.

Jury.—Did he say it was a military dress?—I do not recollect.

Mr. Plunkett.—Is not an uniform a military dress?—Yes.

Did he say any thing more about?—The colour was?—I do not recollect he mentioned the colour, but he said it was very handsome.

Had you any conversation with him and any loss he sustained that night?—No, sir.

Had you any conversation respecting a magazine?—Yes, he said something about that.

Mention what he said?—He mentioned there was a parcel of powder lost.

Jury.—Did he say where it was lost?—At a dépôt.

Where?—He did not say where.

Mr. Plunkett.—Had you any conversation respecting a proclamation?—Yes, he said there was such a thing.

Did he mention to you any particular way by which he could leave the house in case any person came to arrest him?—He did.

What was it?—That if any person came to arrest him he would go through the parlor window into the back-house and through the fields.

Pray, sir, during the month or three weeks that he was latterly in the house, was he in the habit of writing?—He might have written but I did not see any of his writing.—Look at that paper, did you ever see it before?—[showing him the paper found upon the chair.]—I did.

Where?—With doctor Trevor.

Did you ever see it in your mother's house?—No.

Whose hand-writing is it?—I cannot say.

By virtue of your oath, is it the writing yourself, or your mother, or any of the family?—By virtue of my oath it is not.

Jury.—Are you acquainted with the hand-writing of the person of the name of Hewitt?—No, sir.

Mr. Plunkett.—In what room did he lodge?—In the back-parlour.

Were you at the house the evening he was arrested?—I was.

Did you see him under arrest?—No, sir.

Was there any other lodger there?—No, not to my knowledge.

Do you know he was arrested by major Sirr?—I do; the major came into my room. I was in bed, unwell.

Was there any other person arrested at your mother's house this summer?—No.

Was the prisoner that person who was arrested?—He was, sir.

[Not cross-examined.]

[Extracts from the proclamation found by serjeant Rice were read :—See it, p. 723.]

Mr. *Mac Nally* suggested a wish on the part of the prisoner, to have a passage read from this proclamation.

Mr. *Attorney General* said it might be read, when the prisoner went into his defence.

Mr. *Burrowes*.—It will be better to read it now, particularly as the prisoner desires it.

It was accordingly directed to be read—and No. 6, of the decretal part was read, as follows:—

“ 6. The generals are to assemble court-martials, who are to be sworn to administer justice; who are not to condemn without sufficient evidence, and before whom all military offenders are to be instantly sent for trial.”

Mr. *Emmet* said that was not the part he desired.—And the printed copy of the proclamation was handed to him, and he pointed out this passage, which was read by the clerk of the Crown:—

“ 7. No man is to suffer death by their sentence, except for mutiny; the sentences of such others as are judged worthy of death, shall not be put in execution until the provisional government declares its will; nor are court-martials on any pretext, to sentence, nor is any officer to suffer the punishment of flogging, nor any species of torture to be inflicted.

Mr. *Burrowes*.—This proclamation has appeared in several publications, from which Mr. *Emmet* might learn its contents.

The short proclamation, addressed to the citizens of Dublin, was then read.

“ CITIZENS OF DUBLIN,—

“ A Band of Patriots, mindful of their oath, and faithful to their engagement as United Irishmen, have determined to give freedom to their country, and a period to the long career of English oppression.

“ In this endeavour, they are now successfully engaged, and their efforts are seconded by complete and universal co-operation from the country; every part of which, from the extremity of the north, to that of the south, pours forth its warriors in support of our hallowed cause. Citizens of Dublin, we require your aid, necessary secrecy has prevented to many of you, notice of our plan; but the erection of our national standard, the secret, though long degraded Green, will be found sufficient to call to arms, and rally round it every man in whose breast exists a spark of patriotism, or sense of duty; avail yourselves of your local advantages; in a city each street becomes a defile, and each house a battery; impede the march of your oppressors, charge them with the arms of the brave, the pike, and from your windows, and roofs, hurl stones, bricks, bottles, and all other conven-

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“ nient implements on the heads of the satellites of your tyrant, the mercenary, the sanguinary soldiery of England.

“ Orangemen! add not to the catalogue of your follies and crimes; already have you been duped to the ruin of your country, in the legislative union with its tyrant;—attempt not an opposition, which will carry with it, your inevitable destruction, return from the paths of delusion; return to the arms of your countrymen, who will receive and hail your repentance.

“ Countrymen of all descriptions, let us act with union and concert, all sects, Catholic, Protestant, Presbyterian are equally and indiscriminately embraced in the benevolence of our object; repress, prevent, and discourage excesses, pillage and intoxication; let each man do his duty, and remember that during public agitation, inaction becomes a crime; be no other competition known than that of doing good; remember against whom you fight, your oppressors for six hundred years, remember their massacres, their tortures, remember your murdered friends—your burned houses—your violated females;—keep in mind your country, to whom we are now giving her high rank among nations, and in the honest terror of feeling, let us all exclaim, that as in the hour of her trial we serve this country, so may God serve us, in that which will be last of all.”

Major *Henry Charles Sirr* sworn.—Examined by the *Attorney General*.

Do you recollect having arrested any person at Harold's cross?—I do.

Without disclosing the information which you received, state shortly what passed?—I went in the evening of the 25th to the house of one Palmer; I had heard there was a stranger in the back parlour. I rode, accompanied by a man on foot; I desired the man to knock at the door, he did, and it was opened by a girl. I alighted, ran in directly to the back parlour; I saw the prisoner sitting at dinner; the woman of the house was there, and the girl who opened the door was the daughter of the woman of the house. I desired them to withdraw. I asked the prisoner his name; he told me his name was Cunningham. I gave him in charge to the man who accompanied me, and I went into the next room to ask the woman and her daughter about him; they told me his name was Hewitt: I went back to him and asked him, how long he lodged there? He said he came that morning. He had attempted to escape before I returned, for he was bloody, and the man said he knocked him down with a pistol. I then went to Mrs. Palmer, who said he had lodged there for a month; I then judged he was some person of importance. When I first went in, there was a paper upon a chair, which I put in my pocket; I then went to the canal bridge for a guard, having desired them

to be in readiness as I passed by : I planted a sentry over him, and desired the non-commissioned officer to surround the house with sentries while I searched it; I then examined Mrs. Palmer, and took down her account of the prisoner; during which time, I heard a noise, as if an escape was attempted; I instantly ran to the back part of the house, as the most likely part for him to get out at; I saw him going off, and ordered a sentinel to fire, and then pursued myself, regardless of the order; the sentry snapped, but his musket did not go off: I overtook the prisoner, and he said "I surrender." I searched him, and found some papers upon him.

Did he say any thing with regard to the wound he got?—I expressed concern at being obliged to treat him so roughly; he said "all was fair in war."

Look at this paper?—I found this in the room of Mr. Cunningham.

You mean the prisoner?—I do.

Was there any other person there?—No other: the woman and her daughter had retired.

You found other papers in his possession?—I did.

When he got to the castle, did he admit he bore any other name?—He did; he admitted he was Mr. Emmet.

[Here extracts copied from these papers were offered to be read, having been previously shown to the counsel for the prisoner, who consented to the reading of them; but the Court would not permit it.]

Lord Norbury.—The gentlemen are persuaded, that this is intended with kindness towards the prisoner; but the Court has a duty to discharge, and nothing can be read but what is legally proved: the papers themselves, or such parts as are called for may be read; but these copies cannot be received.

Major Sirr cross-examined by Mr. Mac Nally.

Was the paper upon the ground?—No, it was upon a chair; the first near the door, as I turned upon the left.

Lord Norbury.—I take the evidence to stand thus:—The witness went to the house, and after examination of the woman, who stated that the prisoner lodged there, and the admission of the prisoner himself, that he came there that morning, and the evidence of the son proving that the prisoner lodged in that room, in which this paper is found upon a chair; and it not being in the hand writing of any of the family, I think all these circumstances sufficient to let this paper go to the jury; and that it will be evidence against the prisoner, if they believe it to have been in his possession; this is warranted by Lord Preston's case.

Mr. Mac Nally.—We do not object to the admissibility of the evidence.

Lord Norbury.—But we are counsel for the prisoner, and are not to admit any evidence against him, which is not strictly legal. If any question can arise, it is our duty to get him the benefit of it, and we have been suggesting this matter to each other: we think the paper admissible.

The paper found on the chair was then read:

"It may appear strange, that a person avowing himself to be an enemy of the present government and engaged in a conspiracy for its overthrow, should presume to suggest an opinion to that government on any part of its conduct, or could he that advice coming from such authority might be received with attention. The writer of this however does not mean to offer an opinion on any point, on what he must of necessity feel differently from any of those whom he addresses, and which therefore his conduct might be doubted. His intention is to confine himself entirely to those points on which, however widely he may differ from them or others, he has no hesitation in declaring that as a man he feels the same interest with the merciful part, as an Irishman with at least the English part of the present administration, and at the same time to communicate to them in the most precise manner that line of conduct which he may hereafter be compelled to adopt, and which, however painful it must under any circumstances be, would become doubly so if he was not conscious of having tried to avoid it by the most distinct notification. On the two or three of these points, it is not the intention of the undersigned, for the reason he has already mentioned, to do more than to state, what government itself must acknowledge—the of the present conspiracy it knows (comparatively speaking)—nothing. That instead of creating terror in its enemies, confidence in its friends, it will only be by the scantiness of its information, to furnish additional grounds of invective to those who are but too ready to censure it for want of intelligence, which no sagacity could have enabled it to obtain. That it is not able to terrify by a display of its discoveries, it cannot hope to crush by the weight of its punishments. Is it only we are to learn that entering into conspiracy exposes us to be hanged? Are scattered instances which will now be brought forward necessary to exemplify the statute, if the numerous and striking examples which have already preceded were insufficient. If government can neither by the novelty of punishment, or the multitude of its victims, impress us with terror, can it hope to injure the blood of a conspiracy so impenetrably woven as the present by cutting off a few threads from the cloth of it?

"That with respect to the second point, I

"system, however it may change the nature, can affect the period of the contest, that is to take place; as to which the exertions of United Irishmen will be guided only by their own opinion of the eligibility of the moment for effecting the emancipation of their country.

"That administration ———"

Extracts were then read from the paper found upon the person of the prisoner, exactly as stated by Mr. Attorney General.

Lord *Norbury*.—If the prisoner wishes to have any other part of these papers read, he may.

Mr. *Burrows*.—My lord, the prisoner is aware of that, and throughout the trial will act under that knowledge.

The title of a small manuscript book was read—"Plan of the Elements of War."

And next, the paper which was also found in the dépôt, and which was stated by Mr. Attorney General, beginning—"I have but little time to look, &c."

Case closed on the part of the Crown.

Mr. *Mac Nally*.—My lord, Mr. Emmet says, he does not intend to call any witness, or to take up the time of the Court by his counsel stating any case, or making observations upon the evidence; and therefore, I presume, the trial is now closed on both sides.

Mr. *Plunkett*.—It is with extreme reluctance that under such circumstances, and in a case like this, I do not feel myself at liberty to follow the example which has been set me by the counsel for the prisoner.

Mr. *Mac Nally*.—I beg pardon; I am then to call on the Court to decide a matter of practice. No doubt, the crown is entitled to the last word—that is a reply; but if I understand any thing of the arrangement of criminal trials, it is this; the counsel for the prosecution states the case; after the evidence given in support of it, the prisoner is called upon to state his case; and if he does, the counsel for the prosecution has a right to reply; but I conceive that the word *REPLY*, according to its true meaning, is this:—observing upon that which has been urged in answer to the charge; but if there has been no answer, there can be no reply. I believe the case is new; at least since the proceedings in treason were regulated by statute, there is no instance, where there had not been a defence made by the prisoner's counsel, and an answer given to the evidence against him: therefore, I say, it is a new case. However,

* This exercise, by the learned counsel for the crown, of the right to make a second address to the jury, on a trial for high treason in which no evidence had been adduced for the prisoner, and no speech had been delivered on his behalf, gave rise to some animadversion. See the cases of *Rex v. Cobbett* and of *Plunkett v. Cobbett*, A. D. 1804, and the case of the Hon. Mr. Justice Johnson, A. D. 1805, *infra*.

we do not intend to press the objection further, unless my learned friend, with whom I have the honour to act, should think proper to add any thing in support of it.

Lord *Norbury*.—Were it a matter of any doubt, it would be our duty to have it spoken to; but as there can be no doubt, that the counsel for the crown have a right to speak to a great body of evidence, and that the counsel for the prisoner cannot by their silence, preclude the crown from that right—we cannot prevent the reply; if we did, we should introduce a novel practice, which never prevailed in any of the state trials; into many of which for some time past I have looked.

Mr. *Attorney General*.—My lord, we feel that stating a case and observing upon evidence are different duties. I have had the burthen upon me of stating the case for the crown. The prisoner declining to go into any case, wears the impression, that the case on the part of the crown does not require any answer: that is the most charitable way of considering his conduct, and therefore it is at my particular desire that Mr. Plunkett rises to address the Court and the jury upon this occasion.

Mr. *Plunkett*.—My Lords and Gentlemen of the Jury; You need not entertain any apprehension, that at this hour of the day, I am disposed to take up a great deal of your time, by observing upon the evidence which has been given. In truth, if this were an ordinary case, and if the object of this prosecution did not include some more momentous interests, than the mere question of the guilt or innocence of the unfortunate gentleman, who stands a prisoner at the bar, I should have followed the example of his counsel, and should have declined making any observation upon the evidence. But, gentlemen, I do feel this to be a case of infinite importance indeed.—It is a case important, like all others of this kind, by involving the life of a fellow subject; but it is doubly—and ten-fold important, because from the evidence which has been given in the progress of it, the system of this conspiracy against the laws and constitution of the country has been developed in all its branches; and, in observing upon the conduct of the prisoner at the bar, and in bringing home the evidence of his guilt, I am bringing home guilt to a person, who, I say, is the centre, the life-blood and soul of this atrocious conspiracy.

Gentlemen, with respect to the evidence which has been offered upon the part of the crown, to substantiate the guilt of the prisoner, I shall be very short indeed in recapitulating and observing upon it—I shall have very little more to do than to follow the statement which was made by my learned and eloquent friend, who stated the case upon the part of the crown; because it appears to me, that the outline which was given by him, has been with an exactness and precision seldom to be

met with, followed up by the proof. Gentlemen, what is the sum and substance of that evidence?—I shall not detain you by detailing the particulars of it.—You see the prisoner at the bar returning from foreign countries, some time before hostilities were on the point of breaking out between these countries and France.—At first avowing himself—not disguising or concealing himself—he was then under no necessity of doing so; but when hostilities commenced, and when it was not improbable, that foreign invasion might co-operate with domestic treason, you see him throwing off the name by which he was previously known, and disguising himself under new appellations and characters.—You see him in the month of March or April, going to an obscure lodging at Harold's-cross, assuming the name of Hewitt, and concealing himself there—for what purpose? Has he called upon any witness to explain it to you?—If he were upon any private enterprise—if for fair and honourable views—or any other purpose than that which is imputed to him by the indictment,—has he called a single witness to explain it? No; but after remaining six weeks or two months in this concealment, when matters began to ripen a little more, when the house was hired in Thomas-street, which became the dépôt and magazine of military preparation, he then thinks it necessary to assume another character, and another place of abode, accommodated to a more enlarged sphere of action—he abandons his lodging—he pays a fine of sixty-one guineas for a house in Butterfield-lane, again disguised by another assumed name, that of Ellis.—Has he called any person to account for this; or to excuse by argument, or even by assertion, this conduct?—Why, for any honest purpose should he take this place for his habitation under a feigned name.

But you find his plans of treason becoming more mature. He is there associated with two persons. One of the name of Dowdall; we have not explained in evidence, what his situation is, or what he had been; the other is Quigley; he has been ascertained by the evidence to have been a person originally following the occupation of a bricklayer; but he thought proper to desert the humble walk in which he was originally placed, and to become a framer of constitutions and a subverter of empires.

With these associates he remains at Butterfield-lane, occasionally leaving it and returning again; whether he was superintending the works which were going forward, or whatever other employment engaged him, you will determine. Be it what it may; if it were not for the purpose of treason and rebellion, he has not thought proper by evidence to explain it. So matters continued until some short time before the fatal night of the 23rd of July. Matters became somewhat hastened by an event which took place about a week before the breaking out of the insurrection:

a house in Patrick-street, in which a quantity of powder had been collected for the purpose of the rebellion exploded. An alarm was spread by this accident; the conspirators found, that if they delayed their schemes or waited for foreign co-operation, they would be detected and defeated; and therefore it became necessary to hasten to immediate action. What is the consequence? From that time the prisoner is not seen in his old habitation; he moves into town, and becomes an inmate and constant inhabitant of this dépot. These facts, which I am stating, are not collected by inference from his disguise, his concealment, or the assumption of a feigned name, or the other concomitant circumstances; but are proved by the positive testimony of three witnesses; all of whom positively swear to the identity of his person—Fleming, Coghlan, and Farrell, every one of whom swears he saw the prisoner, talking exactly with each other, as to his person, dress he wore, the functions he exercised, and every one of whom had a full opportunity of knowing him. You saw him at Butterfield-lane, under the assumed name of Ellis—you see him carrying the same name to the dépot, not wishing to avow his own, until the achievement of the enterprise would crown it with some additional éclat.

The first witness, Fleming, appears in the character of a person who was privy to the conspiracy—he was acquainted with the dépot from the moment it was first taken—he had access to it and co-operated in the design—he was taken upon suspicion, and under these circumstances he makes the disclosure. If the case of the prosecution rested upon the evidence of this man alone, though an accomplice in the crime, it would be sufficient evidence to go to you for your consideration, upon which you would either acquit the prisoner or find him guilty. In general, from the nature of the crime of treason—from the secrecy with which it is hatched and conducted, it frequently happens that no other evidence can be resorted to, than that of accomplices; and therefore, notwithstanding the crimes of such witnesses, their evidence is admissible to a jury. But, doubtless, every honest and considerate jury, whether in a case of life or not, will scrupulously weigh such evidence. If it be consistent with itself, disclosing a fair and candid account, and is not impeached by contradictory testimony, it is sufficient to sustain a verdict of guilty.

But, gentlemen, I take up your time unnecessarily, in dwelling upon this topic, which I introduced rather in justification of the principles which regulate such evidence, than as attaching any particular weight to it in the present instance. Because if you blot it altogether from your minds, you have then the testimony of two other persons not tainted with the conspiracy; one of them brought in while in a state of intoxication, and the other taken by surprise when he was watching a

the door, in every respect corroborating the testimony of Fleming, and substantiating the guilt of the prisoner. You heard the kind of implements which were prepared, their account of the command assumed by the prisoner,—living an entire week in the dépôt, animating his workmen, and hastening them to the conclusion of their business. When the hour of action arrived, you see him dressed in military array, putting himself at the head of the troops who had been shut up with him in this asylum, and advancing with his party, armed for the capture of the castle, and the destruction of his fellow-citizens!

Gentlemen of the jury, what was the part which the prisoner took in that night of horror, I will not attempt to insinuate to you. I hope and trust in God, for the sake of himself—his fame—his eternal welfare, that he was incapable of being a party to the barbarities which were committed—I do not mean to insinuate that he was—but that he headed this troop, and was present while some shots were fired, has been proved by uncontroverted testimony. At what time he quitted them, whether from prudence, despair, or disgust he retired from their bands, is not proved by evidence upon the table: but from the moment of the discomfiture of his project, we find him again concealed. We trace him with the badges of rebellion glittering upon his person, attended by the two other consuls, Quigley, the bricklayer, and Dowdall, the clerk,—whether for concealment, or to stimulate the wretched peasantry to other acts of insurrection, you will determine,—we first trace him to Doyle's, and then to Bagnall's; one identifies him, the other, from her fears, is incapable of doing so. But the same party, in the same uniforms, go to her house, until the apprehension of detection drove them from her. When he could no longer find shelter in the mountains, nor stir up the inhabitants of them, he again retires to his former obscure lodging, the name of Ellis is abandoned, the regimental coat is abandoned, and again he assumes the name of Hewitt. What is his conduct in this concealment?—he betrays his apprehensions of being taken up by government—for what? Has any explanation been given to show what it could be, unless for rebellion? There he plaus a mode of escape, refusing to put his name upon the door. You find him taken a reluctant prisoner, twice attempting to escape, and only brought within the reach of the law by force and violence. What do you find then? Has he been affecting to disguise his object, or that his plan was less dignified than his motive, that of treason? No such thing: he tells young Palmer that he was in Thomas-street that night; he confesses the treason, he boasts of his uniform, part of which was upon his person when he was taken. He acknowledges all this to the young man in the house, a witness, permit me to remark, not carried away by any excess of over-zeal to say any thing to the injury of the prisoner, and

therefore to his testimony, so far as it affects the prisoner, you may with a safe conscience afford a reasonable degree of credit.

Under what circumstances is he taken? In the room in which he was, upon a chair near the door, is found an address to the government of the country; and in the very first paragraph of that address, the composer of it acknowledges himself to be at the head of a conspiracy for the overthrow of the government which he addresses, telling them in diplomatic language, what conduct *the undersigned* will be compelled to adopt, if they shall presume to execute the law. He is the leader, whose nod is a fiat, and he warns them of the consequences!

Gentlemen of the jury, you will decide whether the prisoner at the bar, or Mrs. Palmer, was the person who denounced those terms, and this vengeance against the government. What is found upon him? A letter written by a brother conspirator consulting him upon the present posture of the rebellion, their future prospects, and the probability of French assistance, and also the probable effects of that assistance, if it should arrive. What farther is found at the dépôt?—and every thing found there, whether coming out of the desk which he appears to have used and resorted to, or in any other part of the place which he commanded, is evidence against him;—you find a treatise upon the art of war, framed for the purpose of drilling the party who were employed to effect this rebellion;—but of war they have proved that they are incapable of knowing any thing but its ferocities and its crimes;—you find two proclamations, detailing systematically and precisely the views and objects of this conspiracy, and you find a manuscript copy of one of them, with interlineations, and other marks of its being an original draft. It will be for you to consider who was the framer of it—the man who presided in the dépôt, and regulated all the proceedings there,—or whether it was formed by Dowdall the clerk—by Quigley the bricklayer, or by Stafford the baker, or any of the illiterate victims of the ambition of this young man, who have been convicted in this court? Or whether it did not flow from his pen, and was dictated by his heart.

Gentlemen, with regard to this mass of accumulated evidence, forming irrefragable proof of the guilt of the prisoner, I conceive no man capable of putting together two ideas can have a doubt;—why then do I address you, or why should I trespass any longer upon your time and your attention?—Because, as I have already mentioned, I feel this to be a case of great public expectation—of the very last national importance; and because, when I am prosecuting a man, in whose veins the very life-blood of this conspiracy flowed, I expose to the public eye the utter meanness and insufficiency of its resources. What does it avow itself to be?—A plan—not to correct the excesses, or reform the abuses of the go-

vernment of the country;—not to remove any specks of imperfection which might have grown upon the surface of the constitution, or to restrain the evergrown power of the crown—or to restore any privilege of parliament; or to throw any new security around the liberty of the subject—no—but it plainly and boldly avows itself to be a plan to separate Great Britain from Ireland, uproot the monarchy, and establish “a free and independent republic in Ireland,” in its place!—To sever the connexion between Great Britain and Ireland!—Gentlemen, I should feel it a waste of words and of public time, were I addressing you or any person within the limits of my voice, to talk of the frantic desperation of the plan of any man, who speculates upon the dissolution of that empire, whose glory and whose happiness depend upon its indissoluble connexion. But were it practicable to sever that connexion, to untie the links which bind us to the British constitution, and to turn us adrift upon the turbulent ocean of revolution, who could answer for the existence of this country, as an independent power, for a year?—God and nature have made the two countries essential to each other,—let them cling to each other to the end of time, and their united affection and loyalty will be proof against the machinations of the world.

But how was this to be done?—By establishing “a free and independent republic!” High sounding name!—I would ask, whether the man who used it, understood what he meant?—I will not ask what may be its benefits, for I know its evils. There is no magic in the name. We have heard of “free and independent republics,” and have since seen the most abject slavery that ever groaned under iron despotism growing out of them.

Formerly, gentlemen of the jury, we have seen revolutions effected by some great call of the people, ripe for change and unfitted by their habits for ancient forms; but here from the obscurity of concealment and by the voice of that pigny authority, self-created and fearing to show itself, but in arms under cover of the night, we are called upon to surrender a constitution, which has lasted for a period of one thousand years. Had any body of the people come forward, stating any grievance or announcing their demand for a change?—No, but while the country is peaceful, enjoying the blessings of the constitution, growing rich and happy under it, a few desperate, obscure, contemptible adventurers in the trade of revolution form a scheme against the constituted authorities of the land, and by force and violence to overthrow an ancient and venerable constitution, and to plunge a whole people into the horrors of civil war!

If the wisest head that ever lived had framed the wisest system of laws which human ingenuity could devise—if he were satisfied that the system were exactly fitted to the disposition of the people for whom he intended it; and that a great proportion of that

people were anxious for its adoption, yet give me leave to say, that under all these circumstances of fitness and disposition, a well reasoning mind and a humane heart would pause awhile and stop upon the brink of his purpose, before he would hazard the peace of the country, by resorting to force for the establishment of his system; but here, in a phrensy of distempered ambition, the author of the proclamation conceives the project: “a free and independent republic,”—he once flings it down, and he tells every man in the community, rich or poor, loyal or disloyal, he must adopt it at the peril of being considered an enemy to the country, and of suffering the pains and penalties attendant thereupon.

And how was this revolution to be effected? The proclamation conveys an insinuation that it was to be effected by their own arms, entirely independent of foreign assistance. Why? Because it was well known, that there remained in this country few who were so devoted to the welfare of their country, who would not shudder at forming an alliance with France; and therefore the people of Ireland are told, “The effort is entirely your own, independent of foreign aid.” But how does this tally with the time when the scheme was first hatched—the very time of the commencement of the war with France? How does this tally with the fact of co-operating in the dépôt, about co-operating with the French, which has been proved in evidence? But, gentlemen, out of the proclamation, I can convict him of duplicity. He tells the government of the country not to resist the mandate, or think that they can effectually suppress rebellion by putting down the present attempt, but that “they will have to exert greater exertion, rendered still greater by foreign assistance,” so that upon the face of the proclamation, they avowed in its deformity, the abominable plan of an alliance with the usurper of the French throne, to overturn the ancient constitution of the country and to substitute a new republic in its place.

Gentlemen, so far I have taken up your time with observing upon the nature and extent of the conspiracy; its objects and the means by which they proposed to effect them. Let me now call your attention to the pretexts by which they seek to support them. They have not stated what particular grievance or oppression is complained of, but they have travelled back into the history of several centuries—they have raked up the ashes of former cruelties and rebellions, and upon the memory of them, they call upon the good people of this country to embark into similar troubles; but they forget to tell the people that until the infection of new fangled French principles was introduced, this country was for an hundred years free from the slightest symptom of rebellion, advancing in improvement of every kind beyond any example while the former animosities of the country

were melting down into a general system of philanthropy and cordial attachment to each other. They forget to tell the people whom they address, that they have been enjoying the benefit equal of laws, by which the property, the person, and constitutional rights and privileges of every man are abundantly protected. They have not pointed out a single instance of oppression. Give me leave to ask any man who may have suffered himself to be deluded by those enemies of the law, what is there to prevent the exercise of honest industry and enjoying the produce of it? Does any man presume to invade him in the enjoyment of his property? If he does, is not the punishment of the law brought down upon him? What does he want? What is it that any rational friend to freedom could expect, that the people of this country are not fully and amply in the possession of?—And therefore when those idle stories are told of six hundred years oppression and of rebellions prevailing when this country was in a state of ignorance and barbarism, and which have long since passed away, they are utterly destitute of a fact to rest upon; they are a fraud upon feeling, and are the pretext of the factious and ambitious, working upon credulity and ignorance.

Let me allude to another topic: they call for revenge on account of the removal of the parliament. Those men who, in 1798, endeavoured to destroy the parliament, now call upon the loyal men, who opposed its transfer, to join them in rebellion; an appeal vain and fruitless. Look around and see with what zeal and loyalty they rallied round the throne and constitution of the country. Whatever might have been the difference of opinion heretofore among Irishmen upon some points, when armed rebels appear against the laws and public peace, every minor difference is annihilated in the paramount claim of duty to our king and country.

So much, gentlemen, for the nature of this conspiracy and the pretexts upon which it rests. Suffer me, for a moment, to call your attention to one or two of the edicts published by the conspirators. They have denounced, that if a single Irish soldier, or in more faithful description, Irish rebel, shall lose his life after the battle is over, quarter is neither to be given or taken. Observe the equality of the reasoning of these promulgers of liberty and equality. The distinction is this: English troops are permitted to arm in defence of the government and the constitution of the country, and to maintain their allegiance; but if an Irish soldier, yeoman, or other loyal person, who shall not within the space of fourteen days from the date and issuing forth of their sovereign proclamation, appear in arms with them; if he presumes to obey the dictates of his conscience, his duty and his interest—if he has the hardihood to be loyal to his sovereign and his country, he is proclaimed a traitor, his life is forfeited, and his

property is confiscated. A sacred palladium is thrown over the rebel cause, while in the same breath, undistinguishing vengeance is denounced against those who stand up in defence of the existing and ancient laws of the country. For God's sake, to whom are we called upon to deliver up, with only fourteen days to consider of it, all the advantages we enjoy? Who are they who claim the obedience? The prisoner is the principal: I do not wish to say any thing harsh of him; a young man of considerable talents if used with precaution, and of respectable rank in society, if content to conform himself to its laws. But when he assumes the manner and the tone of a legislator, and calls upon all ranks of people, the instant the provisional government proclaim in the abstract a new government, without specifying what the new laws are to be, or how the people are to be conducted and managed—but that the moment it is announced, the whole constituted authority is to yield to him; it becomes an extravagance bordering upon phrenzy; this is going beyond the example of all former times. If a rightful sovereign were restored, he would forbear to inflict punishment upon those who submitted to the king *de facto*; but here there is no such forbearance. We who have lived under a king, not only *de facto*, but *de jure* in possession of the throne, are called upon to submit ourselves to the prisoner—to Dowdall, the vagrant politician—to the bricklayer, to the baker, the old clothes-man, the hodman, and the ostler. These are the persons to whom this proclamation in its majesty and dignity calls upon a great people to yield obedience, and a powerful government to give “a prompt, manly, and sagacious acquiescence to their just and unalterable determination!”—“We call upon the British government not to be so mad as to oppose us.” Why, gentlemen, this goes beyond all serious discussion; and I mention it merely to show the contemptible nature of this conspiracy, which hoped to have set the entire country in a flame. When it was joined by nineteen counties from north to south, catching the electrical spark of revolution, they engaged in the conspiracy; the general, with his lieutenant-general, putting himself at the head of the forces, collected not merely from the city, but from the neighbouring counties, and when all their strength is collected, voluntary and forced, they are stopped in their progress, in the first glow of their valour, by the honest voice of a single peace officer, at which the provincial forces were disconcerted and alarmed, but ran like hares, when one hundred soldiers appeared against them.

Gentlemen, why do I state these facts? Is it to show, that the government need not be vigilant, or that our gallant countrymen should relax in their exertions? By no means; but to induce the miserable victims who have been misled by those phantoms of revolutionary delusion, to show them, that they

ought to lose no time in abandoning a cause which cannot protect itself, and exposes them to destruction, and to adhere to the peaceful and secure habits of honest industry. If they knew it, they have no reason to repine at their lot; Providence is not so unkind to them in casting them in that humble walk in which they are placed. Let them obey the law and cultivate religion, and worship their God in their own way. They may prosecute their labour in peace and tranquillity; they need not envy the higher ranks of life, but may look with pity upon that vicious despot who watches with the sleepless eye of disquieting ambition, and sits a wretched usurper trembling upon the throne of the Bourbons. But I do not wish to awaken any remorse, except such as may be salutary to himself and the country, in the mind of the prisoner. But when he reflects, that he has stooped from the honourable situation in which his birth, talents, and his education placed him, to debauch the minds of the lower orders of ignorant men, with the phantoms of liberty and equality, he must feel, that it was an unworthy use of his talents; he should feel remorse for the consequences which ensued, grievous to humanity and virtue, and should endeavour to make all the atonement he can, by employing the little time which remains for him in endeavouring to undeceive them.

Liberty and equality are dangerous names to make use of; if properly understood, they mean enjoyment of personal freedom under the equal protection of the laws; and a genuine love of liberty inculcates an affection for our friends, our king, and country—a reverence for their lives, an anxiety for their safety; a feeling which advances from private to public life, until it expands and swells into the more dignified name of philanthropy and philosophy. But in the cant of modern philosophy, these affections which form the ennobling distinctions of man's nature are all thrown aside; all the vices of his character are made the instrument of moral good—an abstract quantity of vice may produce a certain quantity of moral good. To a man whose principles are thus poisoned and his judgment perverted, the most flagitious crimes lose their names; robbery and murder become moral good. He is taught not to startle at putting to death a fellow creature, if it be represented as a mode of contributing to the good of all. In pursuit of those phantoms and chimeras of the brain, they abolish feelings and instincts, which God and nature have planted in our hearts for the good of human kind. Thus by the printed plan for the establishment of liberty and a free republic, murder is prohibited and proscribed; and yet you heard how this caution against excesses was followed up by the recital of every grievance that ever existed, and which could excite every bad feeling of the heart, the most vengeful cruelty and insatiate thirst of blood.

Gentlemen, I am anxious to suppose the mind of the prisoner recoiled at the scene of murder which he witnessed, and I mention one circumstance with satisfaction; it appears he saved the life of Farrell; and may the recollection of that one good action cheer him in his last moments! But though he may have planned individual murders, that is no excuse to justify his embarking in treason, which must be followed by every species of crimes. It is supported by the rabble of the country, while the rank, the wealth, and the power of the country are opposed to it. Let loose the rabble of the country from the salutary restraints of the law, and who can be upon him to limit their barbarities? We can say, he will disturb the peace of the world and rule it when wildest?—Let loose the winds of heaven, and what power is there than omnipotent can control them?—So it is with the rabble; let them loose, and who can restrain them? What claim, then, can the prisoner have upon the compassion of the jury, because in the general destruction which his schemes necessarily produce, he did not meditate individual murder? In the short space of a quarter of an hour, what a scene of blood and horror was exhibited! I trust not the blood which has been shed in the streets of Dublin upon that night, and since upon the scaffold, and which may hereafter be shed, will not be visited upon the head of the prisoner. It is not for me to say what are the limits of the mercy of God, or what a sincere repentance of those crimes may effect; but I do say, that if this unfortunate young gentleman retains any of the seeds of humanity in his heart, or possesses any of those qualities which a virtuous education in a liberal seminary must have planted in his bosom, he will make an atonement to his God and his country, by employing whatever time remains to him in warning his deluded countrymen from persevering in their schemes. Much has been shed, and he perhaps would have been immolated by his followers if he had succeeded. They are a blood-thirsty crew, incapable of listening to the voice of reason, and equally incapable of obtaining rational freedom, if it were wanting in this country, as they are of enjoying it. They embroil their hands in the most sacred blood of the country, and then they call upon God to prosper their cause. It is just!—But as it is atrocious, wicked, and abominable, I most devoutly invoke that God to confound and overwhelm it.

SUMMING UP.

Lord Norbury.—Gentlemen of the Jury: I shall not delay you longer, than I feel my indispensable duty requires. We have all a very serious duty to perform. I shall not consume a moment of your time by recapitulating the principles of law, for no difficulty exists in the case, in that respect. If there had been an opportunity to make a defence in matters of law, there are no more able men for the purpose.

use, than those who have been assigned as counsel to the prisoner: but they have comforted themselves with a discretion and a sanctity that is deserving of respect.

Gentlemen, it is necessary that you should now what the overt acts are to which the evidence is applicable. The indictment is for high treason, comprehending three several branches of the statute of Edward the third. First, for compassing and imagining the death of the king: secondly, for adhering to the king's enemies; and thirdly, for compassing to levy war. The first overt act in support of these charges is, that the prisoner did with others meet, consult, conspire and agree to rise, levy and make cruel insurrection, rebellion and war against the king, and to procure great quantities of arms and ammunition for the purpose of the said rebellion, and to overturn the constitution. The second is, that he did procure great quantities of arms and ammunition, and did procure to be made one thousand pikes, with intent that divers raitors should be armed therewith, and should use the same in and for making and carrying on insurrection, rebellion and war against the king, and for committing a cruel slaughter against his subjects. The third is, that he did become one of a society of persons associated under the name of the Provisional Government, for the purpose of warring against the king and overturning the constitution, he well knowing the purposes for which that society was formed. The fourth is, that he did compose and write a certain manifesto, purporting to be a proclamation of the provisional government, and purporting that they had determined to separate Ireland from England, and for that purpose to make war against the king and his troops, with intent that the said proclamation should be spread among the people, to unite them to war against the king. The fifth is, that he did write that proclamation, describing it to be the proclamation of persons unknown associated under the name of the Provisional Government, with the same intent as in the former. The sixth is, that he kept and concealed the proclamation, with intent that it should be published and spread among the people,—and the seventh is, that he did ordain, prepare, levy, and make public war against the king. The same overt acts are stated in support of the second count, and here is one in support of the third, that he did with other persons actually levy war against the king.

Gentlemen, having now disposed of that which is the legal import of the charge, I shall proceed to the evidence.

[Here his lordship minutely stated from his notes all the evidence which had been adduced, and accompanied this detail with occasional observations.]

As has been observed, if the witness appears to have been an accomplice in the

crimes of the prisoner, it has been long settled law, that an accomplice is a competent witness to be received to give evidence, otherwise many dangerous crimes would go unpunished and undiscovered. But the jury are to determine under all the circumstances appearing in the case, what credit he deserves, and whether he tells a natural and consistent story. In the present instance, the witness appears consistent, and is corroborated in many particulars, and he is not contradicted in any.

[After stating and observing upon the written evidence, his lordship proceeded.]

Now, gentlemen, I have to conclude this duty of addressing you with one or two observations—probably you have made a clear arrangement of this case in your own minds. But it appears to me, that there are three distinct periods, into which the facts of the case may be divided. First, that which relates to the conduct of the prisoner before the rebellion. Secondly, that which relates to his conduct on the 23rd of July, when the rebellion was raging; and Thirdly, that which relates to his conduct afterwards—then you will consider upon the whole of the facts whether they all correspond and tend to support the general mass of charge, or whether you can form a just conclusion. It remains uncontroverted, that the prisoner had been abroad lately, and that he returned to this country, and then appeared openly. But it has been proved that in the month of April, upon the breaking out of the war, he disguises his name and character, and from that time until he is taken, he never goes by his own genuine name. He lives in a sequestered way—he conceals his name, and assumes that by which he was afterwards known in the dépôt—he lives there for a week before the rebellion broke out, and as to his conduct there, many facts have been proved by the witnesses who are not contradicted. He has been proved by three witnesses to have acted there as the first in command, and to have had there that uniform in which he appeared at other places subsequent to the rebellion, and which was described to you by the farmer, and of which he spoke to his own friend Mr. Palmer of Harold's-cross, who also proved his lamenting the loss of the dépôt.

Now, then, as to the third period; what happened after the 23rd of July? the prisoner went to the country dressed in that same uniform. He proceeded to the neighbourhood of Tallagh, in company with two others in rebel uniforms, Doyle identifies the prisoner in that situation beyond controversy, and Mrs. Bagnall strongly corroborates him. The prisoner at the bar, during these periods, passed under different names; he was Ellis, he was Hewitt, he was Cunningham, and at last when made a captive, but not till then, he acknowledged his name to be Emmet.—He took particular pains to disguise himself

at Harold's-cross,—he refused to have his name put on the door—he endeavoured to escape, was secured by major Sirr, and is now brought to the bar—and I am sure if I could with just propriety express my concern at seeing such a young gentleman at this bar, I would readily do so, but if you, gentlemen, shall be of opinion that the accusation against him is well founded, it is well for the community that he is there. It was my duty to condense the evidence into as narrow a compass as I could, and I have been obliged to state the facts which have been proved by the parol and written evidence, accompanying them with observations, which are submitted entirely to you, for you are to determine upon them all—and upon the credit of those who proved them.

Gentlemen, no witnesses have been called for the prisoner at the bar, and now you have your duty to perform. If you have a rational doubt—such as rational men may entertain—upon the evidence, whether the prisoner was engaged in these transactions, you should acquit him. If you believe the evidence, it is direct proof of all the treasons charged against him. But I say, if you have a doubt you should acquit him. If you do not entertain any doubt, but believe the evidence, and the criminal conduct and intentions imputed to the prisoner, you are bound to decide between the prisoner and the justice due to your country, and in that case you should find him guilty.

The jury did not retire from the box, and after a few minutes deliberation, the foreman addressed the court:—

Foreman.—My lords, I have consulted my brother jurors, and we are all of opinion that the prisoner is guilty.

Mr. Attorney General.—My lord, it remains for me to pray the judgment of the court upon the prisoner.

Clerk of the Crown.—Gaoler, put Robert Emmet, esq. to the bar.

Mr. Mac Nally.—My lords, I hope I am not intruding upon the Court, and that it is not incompatible with my duty, now that the verdict has been pronounced, to state a request of the prisoner which probably ought to be addressed to the attorney-general rather than to the Court—it is, that the motion for judgment might not be made until to-morrow.

Mr. Attorney General.—My lords, I have made the motion, and it is impossible for me now to comply with the request.

The Clerk of the Crown read the indictment and stated the verdict found in the usual form. He then concluded thus:—"What have you therefore now to say, why judgment of death and execution should not be awarded against you according to law?"

Mr. Emmet.—Why the sentence of the law should not be passed upon me, I have nothing to say—why the sentence which in the public mind is usually attached to that of the law, ought to be reversed, I have much to say. I

stand here a conspirator—as one engaged in a conspiracy for the overthrow of the British government in Ireland; for the fact of what I am to suffer by the law; for the motives which I am to answer before God—I am ready to do both. Were it only the fact of a treason;—were it that naked fact alone which I stood charged;—were I to suffer no other punishment than the death of the body,—I would not obtrude on your attention, having received the sentence, I would lay my neck in silence to the stroke. But, my lords, I well know, that when a man enters into conspiracy, he has not only to contend with the difficulties of fortune, but to contend with the still more insurmountable obstacles of prejudice; and that if, in the end, fortune abandons him and delivers him over bound into the hands of the law, his character is previously loaded with calumny as misrepresentation;—for what purpose, I know not, except, that the prisoner thus weighs down both in mind and body, may be deemed over a more unresisting victim to condemnation. It is well; but the victim being so obtained and firmly in your power, let him now unmanacle his reputation.—Not my lord, that I have much to demand from you,—it is a claim on your memory, rather than on your candour, that I am making. I do not ask you to believe implicitly what I say. I do not hope that you will let my vindictive ride at anchor in your breasts;—I only ask you to let it float upon the surface of your recollection, till it comes to some more friendly port to receive it, and give it shelter against the heavy storms, with which it is buffeted.

I am charged with being an emissary to France, for the purpose of inciting insurrection in the country and then delivering it over to a foreign enemy. It is false! I did not wish to join this country with France. I do join—I did not create the rebellion—not in France; but for liberty. It is true, there were communications between the United Irishmen and France; it is true, that in consequence of them, the war was no secret upon us. There is a new agent at Paris at this moment, negotiating with the French government to obtain from them an aid sufficient to accomplish the separation of Ireland from England, and before any expedition is it intended to have a treaty signed, as a guarantee, similar to that which Franklin obtained for America. Whether they will do that now, England, you may judge. But the only question with the members of the Provisional Government was:—Whether France should come to this country, as an enemy?—Whether she should have any pretext for so doing?—Whether the people should look to France, as their only deliverer, or through the medium and control of the Provisional Government attain their object? It is not now, that I discover, or that the rest of the Provisional Government of Ireland feel the

it is, that binds states together. They well know, my lords, that such a disposition exists only in proportion to its mutuality of interest; and wherever that mutuality does not exist, no written articles can secure the inferior state, nor supply the means of protecting its independence.

In this view it never was the intention of the Provisional Government of Ireland to form a permanent alliance with France; well knowing, that if there is between states a permanent mutual interest, more or less, though treaties may be made, yet for the most part, it is not the treaty which binds them together, but a sense of common interest, and where that interest does not exist, treaties are soon represented as unjust—they are qualified and interpreted at pleasure, and violated under any pretext. Under these views, it never was the intention to form a permanent treaty with France, and in the treaty which they did make, they had the same guarantee which America had, that an independent government should be established in the country, before the French should come. God forbid that I should see my country under the hands of a foreign power. On the contrary, it is evident from the introductory paragraph of the address of the Provisional Government of Ireland, that every hazard attending an independent effort was deemed preferable to the more fatal risk of introducing a French army into the country. For what?—When it has liberty to maintain and independence to keep, may no consideration induce it to submit. If the French come as a foreign enemy, Oh, my countrymen! meet them on the shore with a torch in one hand—a sword in the other—receive them with all the destruction of war—immolate them in their boats before our native soil shall be polluted by a foreign foe. If they succeed in landing, fight them on the strand, burn every blade of grass before them, as they advance; raze every house; and if you are driven to the centre of your country, collect your provisions, your property, your wives and your daughters, form a circle around them—fight while two men are left, and when but one remains let that man set fire to the pile, and release himself and the families of his fallen countrymen from the tyranny of France.

Deliver my country into the hands of France!—Look at the proclamation.—Where is it stated?—Is it in that part, where the people of Ireland are called upon to show the world, that they are competent to take their place among nations?—that they have a right to claim acknowledgment as an independent country, by the satisfactory proof of their capability of maintaining their independence?—by wresting it from England, with their own hands? Is it in that part where it is stated, that the system has been organized within the last eight months, *without the hope of foreign assistance*, and which the renewal of hostilities has not accelerated?—Is it in that

part, which desires England not to create a deadly national antipathy between the two countries?—Look then to another part of the proclamation—look at the military regulations—*is there a word introduced from the French nomenclature?*—Are not all the terms English—all the appellations of the intended constituted authorities—English?—Why then say the system was from France?—Yes, there was one argument urged; one quotation from the proclamation relied upon, to prove, that we must have meant to resort to France. “You are to show to us, that you have something in reserve wherewith to crush hereafter, not only a greater exertion, on the part of the people; but a greater exertion rendered still greater by *foreign assistance*.” From which an inference is drawn, that foreign assistance is the support of the present system. Because you are called upon to show, that your strength is such, that you can put down the present attempt without bringing out all your force—to show, that you have something in reserve, wherewith to crush hereafter; therefore, the conclusion drawn is, because a future exertion may be rendered greater by foreign assistance, that foreign assistance is the foundation of the present exertion.

But it is said, we must have had it in view to deliver up the country to France, and this is not attempted to be proved upon any ground, but that of assertion.—It is not proved from our declarations or actions; because every circumstance attending the attempt which took place, shows, that our object was to anticipate France.—How could we speak of freedom to our countrymen—how assume such an exalted motive and meditate the introduction of a power, which has been the enemy of freedom wherever she appears?—See how she has behaved to other countries. How has she behaved to Switzerland, to Holland, and to Italy? Could we expect better conduct towards us? No! Let not then any man calumniate my memory by believing, that I could have hoped for freedom from the government of France, or that I would have betrayed the sacred cause of the liberty of this country, by committing it to the power of her most determined foe.

With regard to this, I have one observation to make:—It has been stated that I came from abroad:—If I had been in Switzerland, I would have fought against the French; for I am certain the Swiss are hostile to the French.—In the dignity of freedom, I would have expired on the frontiers of that country, and they should have entered it only by passing over my lifeless corse. But if I thought the people were favourable to the French—I have seen so much what the consequences of the failure of revolutions are—the oppressions of the higher upon the lower orders of the people—I say, if I saw them disposed to admit the French, I would not join them, but I would put myself between

the French and the people, not as a victim—but to protect them from subjugation, and endeavour to gain their confidence, by sharing in their danger.

So would I have done with the people of Ireland, and so would I do, if I were called upon to-morrow.—Our object was to effect a separation from England—

The Court here interrupted the prisoner.

Lord Norbury.—At the moment when you are called upon to show, why sentence of death should not be pronounced against you, according to law, you are making an avowal of dreadful treasons, and of a determined purpose to have persevered in them; which I do believe has astonished your audience. The Court is most anxious to give you the utmost latitude of indulgence to address them, hoping that such indulgence would not be abused by an attempt to vindicate the most criminal measures and principles, through the dangerous medium of eloquent, but perverted talents, I beseech you therefore to compose your mind, and to recollect that the patient attention with which you have been listened to is unparalleled in the history of any other country, that did not enjoy the benignant temper of the British law. You should make some better atonement to expiate your own crimes and to alleviate the misfortunes you have brought upon your country; with which country and with your God I entreat you to make your peace. You must be aware, that a court of justice in endeavouring to control and do away the bad effect of desperate sentiments, which have been thus promulgated, as the effusions of a disturbed and agitated mind, is but the fulfilling that duty, which it owed to the offended laws of an injured country. You, sir, had the honour to be a gentleman by birth, and your father filled a respectable situation under the government. You had an eldest brother, whom death snatched away, and who when living was one of the greatest ornaments of the bar. The laws of his country were the study of his youth; and the study of his maturer life was to cultivate and support them. He left you a proud example to follow; and if he had lived, he would have given your talents the same virtuous direction as his own, and have taught you to admire and preserve that constitution, for the destruction of which you have conspired with the most profligate and abandoned, and associated yourself with hostlers, bakers, butchers, and such persons whom you invited to councils, when you erected your provisional government. When you sallied forth at midnight with such a band of assassins, and found yourself implicated in their atrocities, your heart must have lost all recollection of what you were. You had been educated at a most virtuous and enlightened seminary of learning, and amidst the ingenuous youth of your country, many of whom now surround you, with the conscious pride of having taken up arms to save their country

against your attacks upon it; and amongst them, there may be a throb of indignant sorrow, which would say—"Had it been an open enemy I could have borne it; but that it should be my companion and my friend!"

Mr. Emmet.—My lord—

Lord Norbury.—If you have anything to urge in point of law, you will be heard; but what you have hitherto said, confirms and justifies the verdict of the jury.

Mr. Emmet.—My lord, I did say I had a thing to offer, why the sentence of the law should not pass upon me. But if that is all I am asked, that is not all I am to say, even from the voice of those who surround me.—But the judge when he pronounces a sentence of the law, does not confine him to the mere form which is prescribed—he feels it a duty, I am sure from pure motive to give an exhortation to the prisoner.—The judges sometimes think it their duty to enquire upon his motives.—What I claim then is to—free my character from a foul imputation. Though you, my lord, sit there as judge; as I stand here a culprit; yet, you are but a man;—and I am a man also. And when you or any other judge speak against the motives of a dying man, I do conceive it to be the right of the dying man,—that it is his duty,—to vindicate his character and his views from aspersion.—If I say any thing contrary to the will of your lordship may stop me, and I will submit immediately upon being corrected.—But as hardly possible, when I am justifying my motives, to avoid mentioning some which may be disagreeable to those I address.—all I can say, is, that they should have been passed over in silence.—If my motives are not to be justified, nothing should be said, but the pronouncing of the sentence.—If I am not permitted to vindicate my character, let no man dare to calumniate my motives.—If I am permitted to go on—

Lord Norbury.—You have learning and discrimination enough to know, that if a juror were to sit in a court of justice to hear a man proclaim treason, and to proceed to warrantable lengths in order to captivate and delude the unwary, or to circulate opinions of principles of the most dangerous tendency for the purposes of mischief, it would be an assault to the law, and to the justice of the country, for which those who preside would be responsible; but in every matter relevant to your own case you shall have every indulgence.

Mr. Emmet.—Then I have nothing more to say, if I am not permitted to vindicate myself. Vindication rests upon abstract principles, and the views with which that principle is applied. I did wish to state both. I can wish to state the views which I had, without presuming to make application of them to any body—I can only say, that my motives, an abhorrence of the spilling of blood, resulting from an ardent attachment to my country, from a sense of public duty, in which I have

been brought up from the age of ten years. I had hoped that such a thing as public principle might have existed. But if I go to my grave, with this imputation cast upon me this day, that I wished for personal aggrandizement and dominion, I should go with a heavy weight upon my mind. I appeal to every man who heard it, not to believe it. I would appeal to those who cannot hear what I am not permitted to say, to follow the attorney-general and discharge it altogether from their minds. Let it remain in silence—in charitable silence. I have now done. I have burned out my lamp of life. For the public service, I abandoned the worship of another idol^o I adored in my heart. My ministry is now ended. I am now to receive my reward. I am going to my cold grave. I have one request to make. Let there be no inscription upon my tomb. Let no man write my epitaph. No man can write my epitaph. I am here ready to die. I am not allowed to vindicate my character; and when I am prevented from vindicating myself, let no man dare to calumniate me. Let my character and my motives repose in obscurity and peace, till other times and other men can do them justice; *Then* shall my character be vindicated. *Then* may my epitaph be written. I HAVE DONE.

Lord Norbury.—I was in hopes that I might have been able to recall you to a more composed state of mind, suitable to the melancholy situation in which you are placed. I lament that it was vain to attempt it. A different conduct would better become a man who had endeavoured to overthrow the laws and the liberties of his country, and who had vainly and wickedly substituted the bloody proscriptions of the provisional government, in the room of the most temperate, mild, and impartial justice with which a free country was ever blessed. Had you been tried under the system of your own invention, you would not have been listened to for an instant; but your code would have crushed the inventor. And such has been the well-known fate of most of the leaders of modern republicanism, where such talents and dispositions as yours have been resorted to, that the prostituted pen of every revolutionary raver might be put in requisition to madden the multitude, and to give sovereignty to the mob.

Mr. Emmet.—I beg pardon;—I wish to mention one circumstance, which is, to state expressly, that I did not come from France;—I did not create the conspiracy—I found it when I arrived here;—I was solicited to join it,—I took time to consider of it, and I was told expressly, that it was no matter whether I did join it or not—it would go on. I then, finding my principles accord with the measure, did join it, and under the same circumstances would do so again.

Lord Norbury.—The history of your trial, and the circumstances relating to it, are fresh

in every man's recollection. Be assured that I have the most sincere affliction in performing the painful duty which devolves upon me, and let me, with the most anxious concern, exhort you, not to depart this life with such sentiments of rooted hostility to your country as those which you have expressed. Be assured that far other sentiments will better contribute to give you comfort at your departure from this life, and to obtain forgiveness and mercy in that which is to come—as well as to give you fortitude to bear that dreadful sentence which at this awful moment I must pronounce.

His lordship then pronounced the sentence in the usual form, and the prisoner bowed and retired.

The prisoner was executed the next day, in Thomas-street.

In the Life of the right hon. J. P. Curran, by his son, W. H. Curran, esq., is contained Mr. Emmet's account of the plan of the insurrection, and the causes of its failure: by the indulgence of Mr. Curran I am permitted to reprint it. It is thus introduced by Mr. Curran:

"The following curious and interesting document has been procured through the kindness of a friend for insertion in the present work.

"ACCOUNT OF THE LATE PLAN OF INSURRECTION IN DUBLIN, AND THE CAUSES OF ITS FAILURE.*

"The plan was comprised under three heads—*Points of Attack, Points of Check, and Lines of Defence.*

"The points of attack were three:—the *Pigeon-House, the Castle, and the Artillery-Barracks* at Island Bridge.

"The attack was to begin with the Pigeon-House, the number of men 200. The place of assembly the Strand, between Irish Town and Sandymount. The time low water. The men to divide into two bodies: one to cross by a sand-bank between the Pigeon-House and the Lighthouse, where they were to mount the wall, the other to cross at Devonshire Wharf; both parties to detach three men with blunderbusses and three with *jointed pikes* concealed, who were to seize the sentries and gates for the rest to rush in. Another plan was formed for *high water*, by means of pleasure or fishing-boats going out in the morning one by one, and returning in

"* Annexed to the copy from which the above has been transcribed is the following memorandum, in the hand-writing of a gentleman who held a confidential situation under the Irish government. 'The original of this paper was delivered by Mr. Emmet on the morning just before he was brought out to execution, in order to be forwarded to his brother Thomas Addis Emmet at Paris.'"
Curran.

* See the note in p. 1097.

the evening to the dock at the Pigeon-House, where they were to land. A rocket from this was to be the signal for the other two, viz.

pointed "The Castle, the number of men 200. The places of assembly Patrick's-street depôt. A house in Ship-street was expected, also one near the gate. A hundred men to be armed with pointed pikes and blunderbusses, the rest to support them, and march openly with long pikes. To begin by the entrance of two job coaches, hackney coachmen, two footmen, and six persons inside to drive in at the upper gate into the yard, come out of the coaches, turn back and seize the guard (or instead of one of the job coaches a sedan going in at the same time with two footmen, two chairmen, and one inside); at the same moment a person was, in case of failure, to rap at Lamprey's door, seize it, and let in others, to come down by a scaling ladder from a window on the top of the guard-house, while attacks were made at a public-house in Ship-street, which has three windows commanding the guard-house, a gate in Stephen-street, another at the Aungier-street end of Great George's-street leading to the ordnance, another at the new houses in George's-street, leading to the riding-yard, and another over a piece of a brick wall near the Palace-street gate. Scaling ladders for all these. Fire-balls if necessary for the guard-house of the upper gate. The LORD LIEUTENANT and principal officers of government, together with the bulk of artillery, to be sent off under an escort to the commander in Wicklow, in case of being obliged to retreat. I forgot to mention that the same was to be done with as much of the Pigeon-House stores as could be. Another part with some artillery to come into town along the quays, and take post at Carlisle bridge to act according to circumstances.

"ISLAND BRIDGE, 400 men. Place of assembly Quarry-hole opposite, and Burying-ground. Eight men with pistols and one with blunderbuss to seize the sentry walking outside, seize the gates, some to rush in, seize the cannon opposite the gate, the rest to mount on all sides by scaling ladders; on seizing this, to send two cannon over the bridge facing the barrack road. Another detachment to bring cannon down James's-street, another towards Rathfarnham as before. To each of the flank points, when carried, reinforcements to be sent, with horses, &c., to transport the artillery. Island bridge only to be maintained (a false attack also thought of after the others had been made on the rear of the barracks, and, if necessary, to burn the hay stores in rear).

"Three rockets to be the signal that the attack on any part was made, and afterwards a rocket of stars in case of victory, a silent one of repulse.

"Another point of attack not mentioned, Cork-street barracks; if the officer could surprise it, and set fire to it; if not to take post in the house (I think in Earl-street, the street

at the end of Cork-street, leading to New-market, looking down the street with musketry, two bodies of pikemen in Earl-street to the right and left of Cork-street, and concealed from troops marching in that street. Another in (I think Marrowbone-lane) to wait them in rear. Place of assembly fields adjacent, or Fenton fields.

"POINTS OF CHECK. The old Castle-house, 300 men. The gateway to be seized and guard disarmed by a few men, the gate to be shut or stopped with a load of straw; to be previously in the street. The other side gate to be commanded by musketry, and the bulk of the 300 men to be distributed in Parliament street, Crane-street, and those streets falling into Essex-street, in order to seize them if they forced out. The pointed pikes and blunderbusses lying under great ones rendered all these surprises unsuspected; fire-balls if necessary, and a beam of rockets.

"An idea also was, if money had been got to purchase Rafferty's cheese-shop, opposite to it, to make a depôt and assembly; and to mine under and blow up a part of the Castle-house, and attack them in confusion, as at the Castle. The miners would have been also to mine from a cellar into some of the streets through which the army from the barracks must march. The assembly was at the coal-quay.

"Mary-street barracks, sixty men. A house-painter's house, and one equally removed on the opposite side (No. 36, I believe), whose fire commands the iron gate of the barracks without being exposed to fire from it, to be occupied by twenty-five blunderbusses; the remainder, pikemen, to remain nearer Coles-lane, or to be ready in case of rushing out, to attack them. Assembly in Coles-market, or else detached from Castle-house body.

"The corner house of Capel-street (it was Killy Kelly's), commanding Ormond Quay and Dixon the shoemaker's (or the house beyond it), which open suddenly on the flank of the army without being exposed to their fire, to be occupied by Blund.—assembly attached from Custom-house body.

"LINES OF DEFENCE. Beresford-street to be six issues from Church-street, viz. Coleman-street, King-street, Stirrup-lane, Mary's-lane, Pill-lane, and the Quay. These to be chained in the first instance by a body of chainmen; double chains and padlocks were deposited; they were to be done in this form, [a cross, with the padlock at the point of intersection, and the sills of the doors marked. The blockade to be afterwards filled up; and on the Quay by bringing up the coaches from the stand, and oversetting them, together with the butcher's blocks from Ormond market. The houses over the chains to be occupied with hand-grenades, pistols, and stones. Pikemen to parade in Beresford-street, to attack instantly any person the might penetrate; the number 200. Assembly

Smithfield depôt, where were 800 pikes for reinforcements. The object was, to force the troops to march towards the Castle, by the other side of the water, where the bulk of the preparations and men to receive them were.

"**MERCHANTS' QUAY.** In case the army, after passing the Old Bridge, marched that way, Wogan's house, and a Birmingham warehouse next to it, to be occupied with musquetry, grenades, and stones; also the Leather Crane at the other end of the Quay: a beam to be before the Crane, lying across the Quay, to be fired on the approach of the enemy's column. A body of pikemen in Wine-tavern-street instantly to rush out on them in front, another body in Cook-street to do the same, by five lanes opening on their flank, and by Bridge-street in their rear. Another beam in Bridge-street, in case of taking that route, and then the Cook-street body to rush out instantly in front, and the Quay on the flank N; there was also a chain higher up in Bridge-street, as well as diagonally across John-street, and across New Row, as these three issues led into the flank of the Thomas-street line of defence, which it was intended only to leave open at the other flank, as it was intended to make them pass completely through the lines of defence. Wherever there were chains, the houses over them were occupied as above, and also such as commanded them in front. For this reason the Birmingham warehouse, looking down Bridge-street, was to be occupied if necessary. There was also to be a rocket-battery at the Crane on the Quay, and another in Bridge-street; the number of men 300. Assembly, Thomas-street; depôt Castigan's Mill.

"**THOMAS-STREET.** In case of coming by Queen's-bridge, a beam in Dirty-lane; main body of pikemen in Thomas-street to rush on them instantly on firing the beam. The body on Quay to attack in rear: in case of repulse, Catherine's church, Market-house, and two houses adjacent, that command that street, occupied with musquetry. Two rocket batteries near Market-house, a beam before it, body of pikemen in Swift's alley, and that range, to rush on their flank, after the beam was fired through Thomas-court, Vicars-street, and three other issues: the corner houses of those issues to be occupied by stones and grenades; the entire of the other side of the street to be occupied with stones, &c.: the flank of this side to be protected by a chain at James's Gate, and Guinness's Drays, &c.: the rear of it to be protected from Cork-street, in case the officer there failed, by chains across Rainesford-street, Crilly's-yard, Meath-street, Ash-street, and Francis-street. The Quay body to co-operate by the issues before-mentioned (at the other side), the chains of which could be opened by us immediately. In case of further repulse, the houses at the corner of Cutpurse-row, commanding the lanes at each side of Market-house, the two houses in High-street, commanding that open, and the corner house

of Castle-street, commanding Skinner-row to be successively occupied. In case of final retreat, the routes to be three: Cork-street to Templeogue New-street, Rathfarnham, and Camden-street department. The bridges of the Liffey to be covered six feet deep with boards full of long nails bound down by two iron bars, with spikes eighteen inches long, driven through them into the pavement, to stop a column of cavalry or even infantry.

"The whole of this plan was given up by me, for the want of means, except the Castle and lines of defence, for which I expected 300 Wexford men, 400 Kildare men, and 200 Wicklow, all of whom had fought before, to begin the surprises at this side of the water, and by the preparations for defence, so as to give time to the town to assemble. The county of Dublin was also to act the instant it began; the number of Dublin people acquainted with it I understood to be about 3 or 4,000. I expected 2,000 to assemble at Castigan's Mill, the grand place of assembly. The evening before, the Wicklow men failed, through their officer. The Kildare men who were to act (particularly with me), came in, and at five o'clock went off again, from the canal harbour, on a report from two of their officers that Dublin would not act. In Dublin itself it was given out, by some treacherous or cowardly persons, that it was postponed till Wednesday. The time of assembly was from six till nine: and at nine, instead of 2,000, there were 80 men assembled; when we came to the Market-house they were diminished to eighteen or twenty. The Wexford men did assemble, I believe, to the amount promised on the Coal Quay; but 300 men though they might be sufficient to begin on a sudden, were not so, when government had five hours notice by expresses from Kildare.

"Add to this, the preparations were, from an unfortunate series of disappointments in money, unfinished, scarcely any blunderbusses bought up.

"The man who was to turn the fuzes and rammers for the beams forgot them, and went off to Kildare to bring men, and did not return till the very day. The consequence was, that all the beams were not loaded, nor mounted with wheels, nor the train bags of course fastened on to explode them. From the explosion in Patrick-street, I lost the jointed pikes which were deposited there; and the day of action was fixed before this, and could not be changed.

"I had no means for making up for their loss, but by the hollow beams full of pikes, which struck me three or four days before the 23rd.

"From the delays in getting the materials, they were not able to set about them till the day before; the whole of that day and the next, which ought to have been spent in arrangements, was obliged to be employed in

work. Even this, from the confusion occasioned by men crowding into the dépôt from the country, was almost impossible.

"The person who had the management of the dépôt mixed by accident the slow matches that was prepared with what was not, and all our labour went for nothing.

"The fuses for the grenades he had also laid by, where he forgot them, and could not find them in the crowd.

"The cramp-irons could not be got in time from the smith's, to whom we could not communicate the necessity of dispatch, and the scaling ladders were not finished (but one). Money came in at five o'clock, and the trusty men of the dépôt, who alone knew the town, were obliged to be sent out to buy up blunderbusses, for the people refused to act without some.

"To change the day was impossible, for I expected the counties to act, and feared to lose the advantage of surprise.

"The Kildare men were coming in for three days; and, after that, it was impossible to draw back. Had I another week, had I 1,000*l.*, had I 1,000 men, I would have feared nothing. There was redundancy enough in any one part to have made up, if complete, for deficiency in the rest; but there was failure in all—plan, preparation, and men.

"I would have given it the respectability of insurrection, but I did not wish uselessly to spill blood: I gave no signal for the rest, and they all escaped.

"I arrived time enough in the country to prevent that part of it, which had already gone out with one of my men to disarm the neighbourhood, from proceeding. I found that, by a mistake of the messenger, Wicklow would not rise that night: I sent off to prevent it from doing so the next night, as it intended.

It offered to rise even after the defeat. I wished it, but I refused. Had it risen, the lord would have done the same. It began to assemble, but its leader kept it back, till he knew the fate of Dublin. In the state it dare was in, it would have done the same. It was repeatedly solicited by some of those who were with me to do so, but I constantly refused. The more remote counties did not rise, for want of money to send them the signal agreed on.

"I know how men without candour pronounce on this failure, without knowing one of the circumstances that occasioned it. They will consider only that they predicted it; whether its failure was caused by chance or by any of the grounds on which they made their prediction, they will not care; they will make no distinction between a prediction fulfilled and justified, they will make no compromise of errors—they will not recollect that they predicted also that no system could be formed—that no secrecy nor confidence could be restored—that no preparations could be made—that no plan could be arranged—that no day could be fixed, without being instantly known at the Castle; that government waited to let the conspiracy ripen, and rose it at their pleasure; and that on these grounds only they did predict its miscarriage. The very same men, that, after success, would have flattered, will now calumniate. The same men, that would have made an offering of unlimited sagacity at the shrine of victory, will not now be content to take back the portion that belongs of right to themselves, but would violate the sanctuary of misfortune, and strip her of that covering that chance would have left her.—R. E."—2 *Life of Lord* ran, Appendix 515—522.

665. Trial of HENRY HOWLEY for High Treason; before the Court holden under a Special Commission at Dublin, on Tuesday September the 27th: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.

Tuesday, Sept. 27th,† 1803.

Judges present:—Lord Norbury, Mr. Baron George, Mr. Baron Daly.

Henry Howley was put to the bar. Upon a former day he was arraigned upon the following indictment:

County of Dub- } THE jurors of our lord
lin to wit. } the king upon their oath
present that Henry Howley, late of Crokers-

* From the Report of William Ridgeway, esq. Barrister at Law.

† For the preliminary proceedings see the commencement of Kearney's trial.

†

lane in the city of Dublin carpenter a subject of our said lord the now king not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and intending the peace and common tranquillity of this kingdom to disquiet molest and disturb and the government and constitution of the realm to change subvert and after and our said lord the king from the royal state title

honour power imperial crown and government of this his kingdom to depose and deprive and our said lord the present king to death and final destruction to bring and put he the said Henry Howley, on the twenty-fourth day of March in the forty-third year of the reign of our said lord the king at Croker's lane aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord off and from the royal crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death. And that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations and compassings aforesaid he the said Henry Howley, as such false traitor as aforesaid on the said twenty-fourth day of March in the said forty-third year of the reign of our said lord the king and on divers other days and times as well before as after at Croker's lane aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did meet consult combine conspire confederate and agree to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this kingdom, and at another time to wit on the said twenty-fourth day of March in the said forty-third year of the reign of our said lord the king with force and arms at Croker's lane aforesaid in the city and county of the city of Dublin aforesaid the said Henry Howley as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid falsely wickedly, and traitorously did procure and did cause to be procured, great quantities of arms and ammunition guns pistols gunpowder and shot and then said there falsely maliciously and traitorously did make and prepare and did cause and procure to be made and prepared a great number to wit one thousand pikes with intent that divers other false traitors whose names are to the said jurors unknown should be armed with the said guns swords pistols and pikes and being so armed should use the same and the gunpowder shot and ammunition aforesaid in and for the raising levying making and carrying on insurrection rebellion and war against our said lord the king and in and for the committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king in this kingdom.

And that afterwards to wit on the said twenty-fourth day of March in the said forty-third year of the reign of our said lord the king with force and arms at Croker's lane aforesaid in the city and county of the city of Dublin aforesaid the said Henry Howley as such false traitor as aforesaid in further

prosecution of his treason and treasonable purposes aforesaid falsely wickedly and traitorously did obtain procure hire and take a lease of a certain warehouse and store there situate with intent and in order that a great quantity of guns swords pistols pikes balls gunpowder arms and ammunition should be there collected and kept and that divers other false traitors to the jurors unknown should there receive the said guns swords pistols pikes balls gunpowder arms and ammunition and should use the same in and for the raising levying making and carrying on insurrection rebellion and war against our said lord the king and in and for the committing and perpetrating a cruel slaughter of and amongst the liege subjects of our said lord the king in this kingdom.

And that afterwards to wit on the said twenty-fourth day of March in the said forty-third year of the reign of our said lord the king with force and arms at Croker's lane aforesaid in the city and county of the city of Dublin aforesaid the said Henry Howley as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully and traitorously gathered against our said lord the king falsely wickedly and traitorously did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said Henry Howley against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided.

And the said jurors of our said lord the king upon their oath do further present that the said Henry Howley being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king of right ought to bear towards our said sovereign lord the king and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Croker's lane aforesaid in the city and county of the city of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom. And in order to fulfil and bring to effect the said traitorous compassing imagination and intentions last mentioned of him the said Henry Howley he the said Henry Howley afterwards to wit on the said twenty-third day of July in the said forty-third year of the

reign of our said lord the king with force and arms at Croker's-lane aforesaid in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of him the said Henry Howley against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

The prisoner pleaded Not Guilty.

He was now asked, was he ready for trial, and answering, that he was, the following jury was sworn, after twelve had been set by on the part of the crown, and fourteen challenged peremptorily on the part of the prisoner.

Robert Ashworth
Thomas Williams
Philip Abbott
John Raper
William Dickson
Francis Foster
John Hodges

Thomas Macready
William Porter
John Rogers
Charles Warming-
ham.
James West

The prisoner was given in charge.

Counsel for the Crown.

Mr. Attorney-General.

Mr. Mayne.

Mr. Townsend.

Mr. Ridgeway.

Agents.—Messrs. T. & W. Kemmis, Crown Solicitors.

Counsel for the Prisoner.

Mr. Mac Nally.

Mr. B. Campbell.

Assistant Counsel.

Mr. Bethel.

Agent.—Mr. L. Mac Nally.

Mr. Townsend opened the indictment.

Mr. Attorney General.—My Lords and Gentlemen of the Jury;—The prisoner, Henry Howley, is brought before you to answer a charge of high treason; and if the evidence which will be offered against him shall be such as deserves credit in your estimation, it will appear to you distinctly that he was an early, a principal, and a persevering conspirator.

Gentlemen, the prisoner is indicted upon two clauses of the statute of 25th Edward 3rd. First, for compassing and imagining the death of the king; and secondly, for compassing to

levy war against him: and there are in the indictment several distinct overt acts laid, which specify the means used by him to accomplish his traitorous designs. It is stated, that he conspired and agreed with others to levy war against the king; that he procured arms and ammunition with that intent; that he had a house or store, for the purpose of receiving and concealing arms and ammunition to be used in the rebellion; and then that he did actually levy war: and the Court will inform you, that where a man conspires with others to levy war against the king, and afterwards war is actually levied, it is an overt act of both species of treason, the compassing and imagining the death of the king, and the compassing to levy war against him.

Gentlemen, this conspiracy, which we have hitherto traced with some success, commenced with activity in the course of the spring, the conspirators conceived new hopes and enlarged their designs, upon the delivery of the king's message to parliament on the 25th of March. It then became necessary to take a storehouse in some obscure part of the town, not much frequented, and which would not be liable to suspicion, and where, by small agrees, arms and ammunition might be collected, for the horrible purposes which the conspirators had in contemplation. Having conceived this design, it became necessary to look out for a man, who by his trade might have some pretence for taking such a place and upon whom they would have the most implicit reliance. Accordingly, I am instructed to state to you, that it did occur to them that Howley, by trade a working carpenter, would be a proper man to become the lessee of such a warehouse. In consequence he was applied to upon the subject, and it appeared that he took a lease from a person of the name of Coleman, of those premises in Mass-lane, or Croker's-alley, in which the celebrated dépôt was afterwards discovered. Accordingly, upon the 24th of March last within a fortnight after the delivery of the king's message, the prisoner did sign and seal a lease, accepting a demise of that very warehouse which was afterwards converted into a rebel magazine.

I do not think, after proving that lease, and the possession under it, that it would be incumbent upon us to take any farther step; because it rests upon the prisoner to get rid of the violent presumption which arises against him, that he took it for the purposes to which it was applied. But it may be satisfactory to trace him somewhat farther, and to show that he made use of the warehouse—that he frequented it—that he worked in it—that he used it in every respect in furtherance and prosecution of those schemes for which it was originally taken.

In the month of May last, he seduced a journeyman carpenter to breakfast with him in High-street, and he afterwards took him to this warehouse in Mass-lane, where he showed

ed him the weapons which were collected, the preparations which were going forward, and in short adopted such a line of conduct, as leaves no doubt that he was an active person, instrumental in forwarding the works in it.—He continued to employ this man, who for several weeks saw preparations of pikes and other weapons, to be employed in the horrible purposes of treason. It is not necessary to follow the conduct of the prisoner in the depôt from day to day; but to show you that he never relinquished his design, we shall produce evidence to prove that upon the 23rd of July he was in the depôt, saw the preparations, attended to what was going forward, and appeared to all intents and purposes one of the conspirators embarked in the design.

During the entire of this period, from March to July, it might be natural to suppose that he lived in the depôt—it would have been a cheap residence. But whether he was apprehensive of fire, or was unwilling to introduce his wife into the secret, or thought that by living there with company about him, he might be more liable to be discovered, he took a lodging in High-street, not far from the depôt, and continued to occupy that lodging until the breaking out of the conspiracy. We shall produce the person with whom he lodged—he searched for him upon the night of the 23rd of July; and it appears, that without notice to the landlord, or any suspicion of his intention to remove, he and his wife eloped about eleven o'clock. From that time he was not heard of until the moment of his arrest. Whether he remained at the depôt during the last week, when the preparations were more active, the witness is not very positive; he has no distinct recollection of having seen him for the last five or six days; but his wife remained in the lodging till the moment of the insurrection. From that time he secreted himself—diligent search was made for him in vain—the person with whom he lodged knew nothing of him—but at length information was had, and major Sirr, with his usual activity, went in search of him.

Gentlemen, it is my duty to tell you, that the circumstances attending the arrest of a person accused, may be favourable or injurious to him. He may adopt such a conduct at the time of his arrest, as may induce a jury to imagine, that he was innocent. On the contrary, certain feelings of guilt, which the mind cannot readily discharge, are frequently betrayed at the moment of arrest. Wherever such circumstances appear, they may be taken into calculation against a prisoner. As an open, fair conduct is favourable to him; so a conduct directly the reverse, must tend to his crimination.

It will appear that he and two other working carpenters were employed about six o'clock in the evening, when major Sirr and his attendants entered the place in which they were. The moment he advanced, the prisoner ran from the spot where he was at work.

This induced major Sirr to think he was the man he was in search of, and he cried out to his party, "Here he is! here he is!" The major advanced, and was probably well known to every man there. He saw the prisoner go to his coat, and take something out of the pocket;—he delayed, until he ascertained what he was about, and seeing a pistol in his hand, the major snapped his, and unfortunately missed fire. He withdrew to adjust his pistol, or provide another, and called upon his attendants to come up. At that moment, a man of extreme good character, of the name of Hanlon, advanced with intrepidity to assist. By this time, the prisoner concealed himself in a corner, behind a wall which protected great part of his person, and he levelled his pistol at Hanlon. The latter perceived what he was at, and prepared to defend himself. Who fired first I cannot particularly state; but they exchanged shots. Hanlon was killed upon the spot, and the prisoner received a wound in his left hand.

In the confusion which must necessarily follow such a lamentable occurrence, the prisoner contrived to escape; but was immediately pursued. In the short period which elapsed, he not only concealed himself, but re-charged the same pistol, and was prepared to defend himself again, by taking away the life of another person; but his intrepidity failed him, and while he was denouncing death to all around him, he was seized, disarmed, and put into a state of security.

Gentlemen, it is my duty to tell you, that you are not to pass a verdict upon this trial for the death of Hanlon. The prisoner is now before you upon a charge of high treason, not of murder; and therefore you are not to consider the death of Hanlon as evidence of the prisoner's guilt as a traitor. But you will give it due weight, as a circumstance affecting the prisoner, and tending to fortify the evidence for the Crown upon the charge of treason; for the consciousness of some guilt may be fairly inferred from such apprehension of arrest, and from such premeditated means to prevent it.

You will consider, whether a pistol was a necessary weapon in the exercise of his trade. You will recollect, how he abandoned his lodgings at the moment of the insurrection. You will connect the circumstances of defending himself so violently, when a peace officer appears to arrest him, with the fact of his being actual lessee of the depôt. And you will consider, whether the whole does not form a strong body of presumptive evidence, to support the actual charge of high treason brought against him by the Crown.

Gentlemen, I shall not trouble you any farther with statement. My wish is, that the circumstances applicable to the case may have due operation upon your minds, and nothing more; and therefore I repeat, that the death of Hanlon is no more to be taken into consideration than if the prisoner had fired at

him and missed. We offer evidence of the resistance he made, as betraying a consciousness of guilt, tending with other facts, to corroborate the evidence for the Crown. But God forbid, that I should endeavour to impress upon you, or that you should—if I were capable of making the attempt—convict a man of one crime, when he was upon his trial on a different and distinct accusation.

Edward Coleman sworn.—Examined by Mr. Mayne.

Pray, sir, do you know Philip Molloy?—I do.

Do you know John Coleman?—I do.

What relation is he to you?—My brother.

Do you know of any storehouse or yard, which they had to let in Spring last?—I do.

Where were they situated, and what were they?—It was formerly a malt store, and is situated in Thomas-street.

Where was the door of it?—There was a door in Thomas-street, and a door in Marshal-lane.

Describe where that lane begins, and where it ends?—One part of it runs into Bridgefoot-street, otherwise Dirty-lane, and the other end runs into Marshal-lane, towards the Fish-shalses.

How is it situated with respect to Thomas-street and the Bull inn?—It is situated between Thomas-street and the lane, towards the rear of the inn. There is a gateway communicating with Thomas-street, and you pass by a house on each side, through an entrance of ten or twelve yards.

Is that Marshal-lane called by any other name?—I cannot say.

That place belonged to Philip Molloy and John Coleman?—It did.

Were you present when any lease was taken of those premises?—I was present when Mr. Howley took a lease of it.

Look at the bar, and see is the person there?—I have seen him but twice, and I believe he is the person.

Mr. Mac Nally.—Do you speak positively?—No.

Mr. Mayne produced a lease to the witness. Did you see that lease before?—I did.

Did you see it executed?—I did.

By whom?—By Philip Molloy, John Coleman, and Henry Howley.

Did you see them sign their names?—I did.

Was that the lease which was executed, when you say the premises were let to Mr. Howley?—It is.

Was the lease executed the day it bears date?—It was executed the 27th, though dated the 24th of March.

What state is that place in now?—It is entirely demolished.

Mr. Mayne.—How came it to be demolished?

Mr. Mac Nally.—To your own knowledge?

Mr. Mayne.—Do you know it is demolished?—I do.

At what time was it demolished?—In the week after the insurrection broke out; in the course of that week, it was entirely demolished.

By whom was it demolished?—I do not know; but by the soldiers.

A Jurer.—For what reason?—Because pikers and ammunition being found in it.

Mr. Mac Nally.—Do you know that he has only heard it?—I only heard it.

Mr. Mayne.—You saw that same sign? Henry Howley?—I did.

You saw him a couple of times?—I did the best of my knowledge; first, when a lease was taken, and at the time it was taken.

What was it you saw him about when the lease was executed?—To talk about the house to inquire about the store.

Was it upon any other reason, or occasion that you saw him?—I am confident it was upon no other.

Now look at the bar, and see whether you can say upon your oath, the prisoner's name?—I cannot positively say; his features were more regular than they are now; it is a mark upon his eye.*

John Coleman sworn.—Examined by Mr. Attorney General.

I believe you and your partner, Mr. Howley, were the proprietors of a malt store at the back of Dillon's in Thomas-street, and that it extends from that to Marshal-lane?—It was.

Do you recollect having demise it to a person?—Perfectly.

Are you an executing party to that lease [showing him the lease]?—I am; that is, hand-writing.

Who is the lessee?—Henry Howley.

Look at the bar; is that the man?—It is.

Do you know any place called Order-alley?—I do. It is that lane which is commonly called Mass-lane, and sometimes the final-lane.

John Coleman cross-examined by Mr. Mac Nally.

You put an advertisement into the public papers, offering this place to be let to a person who would come to take it?—No, I did not.

What then?—I put an advertisement in the gateway in Thomas-street.

You gave notice to the public, that the premises would be let?—I did.

Did the prisoner take it from you?—I did.

If you had known the purpose to which it was afterwards applied, supposing it to be stated, you would not have let it?—Certainly not.

* The prisoner's right eye was much affected by a shot received from Blanton, in attempting to arrest him, as mentioned elsewhere.

The prisoner is a carpenter?—I was informed so.

Is it not common for persons wishing to take houses to employ a carpenter to inspect them, and make a report as to the state of them?—I think it natural.

You say, that Howley took this place in his own name?—He did.

He imposed upon you, as you think, with respect to the purpose for which it was taken?—He told me it was for a timber store, and a workshop for carpenters.

He might have been imposed upon afterwards, in letting it to others, as you think he imposed upon you?—Certainly.

How long had he possession before the 23rd of July?—I gave him possession either upon the 24th or 25th of March, early in the evening; for he told me when he applied upon the 20th of March, that he had received some commissions, and if he had not possession immediately, he would be liable to the consequence of failing in executing them.

Might he not have let this place, which afterwards turned out to be a depot, to persons appearing to be respectable, without having a knowledge of the purpose to which it was to be applied?—He certainly might.

Supposing a respectable gentleman of the name of Ellis came and said he wanted such a place, the prisoner might have let it for profit?—It is possible.

He did not disguise his name to you?—He did not.

Is not that his name to the lease?—It is.

He practised no imposition upon you?—He did not. When he applied first to me, I had not seen him before; he gave me his name, Henry Howley, which I have since heard is his real name.

Patrick Finerty sworn.—Examined by Mr. Townsend.

Pray, sir, what is your employment in life?—A carpenter.

Do you know Henry Howley, the prisoner?—Yes, sir.

Point him out?—He is there [pointing to the prisoner].

How long have you known him?—Several years back.

Do you remember having seen him in the month of May last?—Yes, sir.

You were then lately returned to Dublin?—Yes.

When did you go to see Howley?—At his lodgings in High-street.

At what time of the day did you go?—About breakfast time.

At what time in the month of May?—About the middle of the month.

And you found him at home?—I did.

Did you breakfast with him?—I did, sir.

Had you any particular conversation with him then?—No, sir; not that I can remember.

Where did you go to from his lodging?—I went to Thomas-street with him.

Did you go into any house with him?—I did, sir.

Where was it?—In Mass-lane.

Was it a dwelling-house, or a ware-house?—A ware-house seemingly.

What did you see there?—A great deal of timber boards.

Any other kind of timber?—Yes, what we commonly call tile laths.

What do you mean by that?—Six of them are cut out of a board.

What length are they?—Ten feet, or so.

What thickness?—One inch and an half square.

Jury.—Were they whole deals cut into boards?—I took them to be so.

Mr. Townsend.—Were there any spikes upon them?—Upon a few.

What were they made of?—Iron, I suppose.

Was there a considerable number without spikes when you saw them?—There was.

For what purpose did Howley take you there?—To work, I believe.

What reason have you for believing that it was for that purpose? did he engage you to work there?—He brought me there purposely to work in it.

Did you work there afterwards?—I did.

Did you work there constantly, or from time to time?—From time to time.

How long in the whole?—Three or four days; never a whole week.

Were you paid wages?—I was, part of the time.

Who paid you?—A gentleman, who seemed to be foreman there.

What is his name?—Graham.

Was that his real name?—I believe not.

Did you hear his real name there?—I did.

What was it?—Quigley.

In what kind of work were you employed there?—Chiefly in repairing part of the store, putting up a studded partition.

Do you recollect any thing particular with regard to a door?—I do.

Where was it?—In the first loft. There was a door about three feet wide, to be filled up with brick to look like the wall; a deception like.

Was it to open as a door?—It was.

Into what did it fit?—Into a brick wall.

What was that brick wall made for?—For concealing arms, I suppose.

Did you see the prisoner work at these things?—He did.

At what particularly?—At that door.

At any thing else?—Yes.

At what else?—He helped to make some tables which were made there.

Did you continue there until the 23rd of July?—I did at intervals.

Did you see the prisoner there often, during that time?—He was frequently there, but not to say constantly.

You were not there constantly?—No, sir.

Was he always there when you were there?—No, sir.

Upon the day you first went with him, did he show you any thing particular?—Yes.

What was it?—He showed me a blunderbuss.

Do you recollect what he said upon showing you the blunderbuss?—I do; he said something concerning a plane; he asked me, "was it not a good plane."

Was there any part between the months of May and July, when you staid away longer than you did at other times?—There was.

How long?—Ten or twelve days.

For what reason did you stay away?—I did not conceive I was properly paid.

How came you to return?—By the instigation of one of the men who was sent for me.

Do you recollect the night of the 23rd of July?—I do.

Do you recollect having been there in the course of that week?—I do.

Did you see Howley there during that week?—I believe I might once.

Did you or did you not see him?—I cannot swear.

After the insurrection of the 23rd, what became of you?—I was taken on the Monday following, and put into the Prévot.

How long were you kept there?—Five weeks and three days.

What became of you afterwards?—I was discharged and went to work.

Where were you when Howley was arrested?—At Pinlico, at work in the same yard.

Did you see major Sirr come into the yard?—Yes, he was the first man I observed.

Where was the prisoner then?—He was inside of a bench at work.

Was he near you?—Not very far from me.

What did he do upon major Sirr coming in?—He left the bench, and went into a corner, to a recess.

What did he there?—I cannot say, I did not see him there.

What did major Sirr do?—He snapped at him.

His pistol did not go off?—No, sir.

What became of major Sirr then?—He retired.

Did any other person advance?—There did.

Who advanced?—I understood his name was Hanlon.

What happened?—There were two shots fired; close one after another.

One was fired by Hanlon?—Yes; I did not see either of them fire.

Where was the other shot fired from?—I believe from the corner.

Did you hear the shots?—I did.

From what place did the shots come?—One of them was immediately after the other.

You say one shot was fired by Hanlon?—Yes.

You heard the other shot fired?—Yes.

Could you know by hearing it from whence it came? whether it was from that recess into which the prisoner had run?—Yes.

Was there any other person there?—No other that I could see.

Did the shot which came from the recess hit any body?—I believe it hit Hanlon.

What became of him?—He fell.

What became of him then?—He was dead I suppose; I saw him lying dead.

Patrick Finerty cross-examined by Mr. *Campbell*.

You were employed by the prisoner to make pikes?—No, I do not say that.

I ask you this, did you not know at the time you were employed, for what purpose the works were carrying on?—I did.

For what purpose did you know them to be carrying on?—For the purpose of insurrection.

Do you not think it is a very bad thing for any man to be concerned in such an engagement?—I do, sir, at present.

Did you think so at the time you were employed?—I cannot say what I thought then.

Try and recollect yourself; did you at that time consider it good or bad?—I thought partly good of it at that time.

Do you not believe that the consequence would be the murder of many honest and loyal people?—I do believe it.

Do you conceive that any work which we be attended with such consequences must be a good work?—No, I do not.

Did you, as soon as you knew of this, not being for such a bad purpose, give information of it?—I did not.

Do you not conceive that it is the duty of a good and loyal subject, to give information of treason as soon as he comes to a knowledge of it?—I suppose it is; I believe it is.

Did you then do that which a good man ought to do?—I did not.

How soon did you give information?—Not till I was taken latterly.

When was that?—The sixteenth of this month.

Were you taken before that?—I was.

When?—The 25th of July.

Who took you?—A party of the *Liberté* Rangers.

For what?—For being out late.

How long were you in confinement?—Five weeks and three days.

You gave no information during that time?—No.

When were you taken the second time?—The 16th of this month.

How soon after did you give information?

—Not till the Tuesday following.

Will you account why you continued so long knowing of this conspiracy, and the consequences it produced, yet did not give information during all that time?—Because I did not wish to make myself an object before the public, by giving information.

What do you mean by making yourself an object?—By coming on the green cloth to prosecute any man.

Do you consider it a disgrace to prosecute any man for treason?—No, I do not.

Then what was your objection to giving information?—I told you already.

What was it?—I did not wish to make myself an object by coming into court.

Do you conceive yourself an object now?—I do.

Of what kind?—Of giving evidence against the prisoner.

Have you not given information to save your life?—I have in hope of it, but I have not been promised it.

Was any promise made to you?—None.

Jury.—You have stated, that in the warehouse you saw a great many pieces of timber ten feet long; and no question was asked you for what purpose they were made. For what purpose do you think they were?

Mr. Mac Nally.—I must object to the witness giving his opinion.

A Juror.—Do you know the purpose for which these pieces of timber were designed? or did you learn at the place for what purpose they were designed?—I understood they were for pikes.

Court.—Was it so understood by the people there?—It was generally understood that they were for pikes.

Jury.—If those pieces were rounded by a plane, would they make such handles as you saw with other pikes?—They would.

John Fleming sworn.—Examined by *Mr. Attorney General.*

Where did you reside previous to the 23rd of July last?—With the widow Dillon in Thomas-street.

Is that a public-house?—It is.

What is the sign of it?—The White Bull.

Were you acquainted with the warehouse or dépôt, in which arms and ammunition were collected?—I was.

How was it situated with respect to the White Bull inn?—There is nothing but the wall between the yard and the store; the store lay just behind the yard.

Were you hostler at the inn?—I was.

Were you known to be so?—I was.

Were you long acquainted with the object for which the stores were employed?—I was a good while; I cannot say how long.

Were you acquainted with it three months before the insurrection?—I was that at any rate.

What sort of work was going on there?—Generally making pike handles and heading them, and different other works I did not understand.

Did you see any arms or ammunition?—I did.

Of what kind?—Blunderbusses, pistols, firelocks, and ball cartridge of all sorts.

Did you hear any conversation at that time what the preparations were about?—I heard very little conversation in regard to that, and what I heard I could not well tell it now. I had no opportunity of being much in company, only going in and out.

But did you understand in general what the object was?—First to take Dublin.

Were these preparations for that?—They were.

Did you understand that there was any particular place in the city to be attacked?—Yes, the castle; they would rather have that first. Were you acquainted with a man of the name of Henry Howley?—I was.

Look at the bar?—I know him very well.

Is the prisoner the man you knew by the name of Henry Howley?—He is.

Did you see him at the White Bull, or in that neighbourhood?—I saw him at the White Bull, and at the stores.

At what stores?—The place where they were working.

Do you mean the place where the arms and ammunition were collected?—Yes.

What was the last day you saw him there?—I saw him on the 23rd.

Of what month?—July, I believe.

Pray what was the last hour at which you saw him that evening?—It was late, I cannot particularly tell the hour.

Pray did you ever see him at any particular work there?—I saw him making pike handles as I thought; I was told they were pike handles, and several things I did not understand what they were.

Pray did you hear or see any thing of a proclamation in that warehouse?—I did hear there was such a thing.

Did you hear any part read?—A small sketch or so.

Do you recollect about what hour they left the dépôt that night?—It was after nine o'clock.

Did you know particularly every person that went out that night, or were there so many that you could not notice them?—I did not know the half of them but by eye-sight.

Did you know a man who went by the name of Graham?—I did.

Was that his real name?—That was the name I heard him called at first, but afterwards I understood his name was Quigley.

What trade was he?—A bricklayer.

Who was it did the brick work of the partition you mentioned formerly?—It was Quigley did the brick part of it.

Did you see pikes and other arms taken out of the store that evening?—There were.

Were there any persons dressed in uniform?—There were.

How were they dressed?—In boots, white pantaloons and waistcoat, and a green coat with lace and epaulettes, and a cocked hat and feather like a field officer.

Did you see Quigley dressed that evening?—He wore a green coat and one epaulette, boots and pantaloons and waistcoat; I suppose he expected to be a general.

Where did they go?—Towards Thomas-street.

Were there any shots fired?—There were.

By whom?—I cannot exactly say.

Were they by some of the party?—They were.

John Fleming cross-examined by Mr. *Mac Nally*.

And you wore a hat and feather?—No. You were not a general?—No, sir.

You were as respectable as Quigley who had got an uniform?—I was not dressed.

Did you get nothing at all?—I got a blunderbuss.

Did you understand what you were to do with it? were you to go to the Castle?—As far as I could.

Were you not made a privy councillor?—I do not know.

What business were you?—I was an hostler there.

Then you were made master of the horse?—No.

There were many things that you did not understand; did you not understand that the rebels might have killed the king's subjects?—There were many things that I did not know.

Did you see the ink bottles? were they for the secretary of state?—I did see them.

Were they plastered over?—I cannot say.

There were many people?—There were.

Was this honest man there, except as a journeyman?—I cannot say.

Were you acting as an honest man?—I acted as others.

When you held a blunderbuss to take the Castle and kill every man who opposed you, did you think yourself honest then, I allow you are honest now?—I am as honest now as I was then; I never stole any thing.

Were you an honest man when you intended to commit murder? did you read the ten commandments? you are a modern philosopher perhaps, and know nothing of religion?—I have read them.

Does not God say, "Thou shalt do no murder"?—I was seduced as many others like me.

When you went out to commit many murders in pursuit of your honourable purpose, and you say you were as honest then as you are now, did you intend as well to plunder as to kill?—I did not intend to plunder.

You would not take a sideboard of plate, if it fell in your way. Were all the men in the dépôt as honest as yourself?—They might, or they might not.

Would it be possible for any man against whom a charge was brought, and standing upon his trial, to get witnesses who were in that dépôt, and known to be as honest, as you say you yourself are?—Very like they might.

Do you not believe, that from the generalissimo down to the private, they were all rebels?—I know they were.

Let me ask you then, is it not to save your own life you come here to give testimony?—I was not promised my life.

If you had been promised your life, you

would have nothing to fear. Are you afraid that you will be hanged, like some of your companions who have gone before you?—I do not know whether I will or not.

Have you not heard, that one-third of the persons who were in the dépôt have been hanged?—I have heard that some of the were.

And are you not as liable as any other to be hanged, if you were sent upon your trial?—I cannot say.

Do you expect to be hanged?—I do not know whether I will or no.

You deserve it, but believe you will be hanged, on account of the good act of evidence?—I do not know; I never committed murder.

But if you were tried, do you not deserve to be hanged as well as any others?—I believe there was evidence against me, I would.

Have you not come here this day to give evidence being brought against yourself?—The truth?—What is that? I wish to know again.

As you think yourself are liable to be hanged, do you not come here to give yourself from being hanged?—I came here as a witness, but do not know whether I will be hanged or not.

Were you ever a watchman?—I was in St. Catharine's parish?—Yes.

You did your duty well?—I did.

Why were you dismissed?—Because I committed myself.

You dismissed yourself?—I did.

On your oath?—I did.

You were in the army?—I was, in the militia.

You dismissed yourself there?—No, I was dismissed.

With a concert of drums after you?—No.

Were you obliged to quit?—Many a poor man was.

What for?—On suspicion.

And tried by a court-martial?—Yes.

And found guilty upon suspicion?—I was being a mile from quarters.

A suspicion of what?—A suspicion of being in bad company.

You remember a woman upon that suspicion?

Lord Norbury.—The man is not bound to answer to criminate himself.

Mr. Mac Nally.—My lord, after sentence and judgment, he can have nothing to apprehend. I have looked into this subject, and which I have taken some pains, and I find the sentence of a court-martial may be pleaded in bar to an indictment.

Lord Norbury.—Where the court-martial is instituted under an act of parliament, in the criminals of a certain description, a trial by conviction of that sort may be pleaded in bar.

Mr. Baron George.—You have a right to ask the witness generally to impeach his credit.

Mr. Mac Nally.—When you not change

before the court-martial with having ravished a woman?—Upon my oath, I never was charged with such a thing.

What were you charged with?—For being a mile from quarters. I will swear twenty oaths I never was charged with such a thing as you mention.

Do you know Farrell, who was a witness here during these trials?—I know many a man of the name, but not the witness.

Was he in the regiment with you?—Never.

Jury.—Inform us, what are the other things which you say the prisoner made?—I cannot describe them.

What were they like?—They were things like tables.

Were they for committing murders?—They were. Every thing that was there was for that purpose.

Did you see pikes made there?—I did.

Did the prisoner make any?—He did.

Did you see him?—I did.

Edward Wilson, esq. sworn.

The witness gave the same evidence as upon former trials. [*Vide Kearney's case, p. 711.*]

Serjeant *Thomas Rice* sworn and examined.

This witness proved the proclamation as before. [*Vide Kearney's case, p. 722.*]

Joseph Harrison sworn.—Examined by Mr. *Townsend.*

Do you know Henry Howley, the prisoner at the bar?—Yes, I do.

Did he ever lodge at your house?—He did.

Where is your house situated?—No. 24 High-street.

When did he come to lodge there?—As near as I recollect, the beginning of February or latter end of January.

How long did he continue to lodge there?—He continued to lodge there until on or about the 23rd of July.

Was he there on the night of the 23rd of July?—I went up stairs about half after eleven; I rapped at every door; an answer was made at every door but his; no answer was made from his room.

Did you go into his room?—No, sir.

How soon after did you go in?—In three or four days I broke it open.

Was it open to your knowledge from the night of the 23rd of July, until you broke it open?—Not to my knowledge.

A Juror.—Was the prisoner in the room that night?—He might be there and not answer.

Mr. *Townsend.*—When you went in, upon breaking open the door, what did you find there besides the furniture?—A few articles of clothes; old worn out rags.

Of what value might they be altogether?—I cannot swear to the value of them; but my wife said they were not worth above five or six shillings.

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Did you ever see Howley from that night till this time?—No, not to know him; but I saw a prisoner go by tied, and they told me it was Howley.

Was his wife ever at your house since the 23rd of July?—Not to my knowledge; she might for what I know.

What was the last time you saw him there before the 23rd of July?—I cannot recollect seeing him for a fortnight or three weeks before, when he paid me what he owed me.

You cannot recollect having seen him after that?—I cannot say; my memory is bad at best, and I cannot recollect him.

[Not cross-examined.]

[Extracts from the proclamation were here read.—*Vide Kearney's Case, page 723.*]

Major *Sirr* called.

Mr. *Mac Nally.*—I am very well aware of the purpose for which major *Sirr* is to be examined. I am aware that what would be evidence in the case of felony, is evidence in treason;—that is, the evidence must apply to the matter charged. Here it must relate to some overt act in the indictment. My lords, I think I stand upon strong ground, which enables me to say, that the evidence must apply to some overt act.

Mr. *Baron George.*—I do not mean to stop you, Mr. *Mac Nally*, in your objection; but surely a man's conduct, when apprehended for any crime, may be given in evidence, as shewing a consciousness of guilt or innocence. It is in that view, we consider the evidence as offered, and in no other respect as relevant. Surely they may shew, that a man accused of a crime fled from justice. You might as well object to some of the former evidence, and we should say we have received wrong evidence, though it respected the behaviour of a man when apprehended for any crime.

Mr. *Mac Nally.*—My lords, I do not wish to obtrude myself upon the Court. The objection occurred suddenly to me, and I have urged it without much consideration. I submit to what the Court determines upon the subject, and shall not press the objection farther.

Charles Henry Sirr, esq. sworn.*—Examined by Mr. *Townsend.*

Do you know Henry Howley, the prisoner at the bar?—I do.

Do you recollect having seen him at any time lately, and where?—I saw him on the evening of the 16th of this month.

Where?—At a house in Finsbury.

Upon what occasion did you go there?—To arrest him.

State what passed when you went there?—I entered a place, where I received information he was at work; I saw three or four men at work; upon my entering a man left his work.

* See p. 1 of this Volume.

Was that the prisoner?—I cannot immediately tell, the man went to a recess; I went immediately forward, suspecting he was the person I was looking for. He took up a coat, and I pushed forward before a gentleman who entered with me, captain Bloxham. I saw the man stoop and take up a pistol. The moment I saw that, I levelled and snapped at him, but missed fire; and I retreated to settle my pistol and get out another, and called for assistance. Soon after I saw Hanlon go up to the place which I had left. Two shots were fired. The second report, I am convinced, was from Hanlon's pistol. I saw the position he was in, and instantly he turned upon his right side and fell down. I heard his report after the other. He died almost immediately. I called for farther assistance. During this time the person ran away. Finerty, who gave evidence here, was at work with that man.

Court.—The man who ran away?—Yes, I called to Finerty and to another person who was there, to approach me; they did so, and did not attempt to fly. After a great deal of confusion, some of the Liberty Rangers, and of the 93rd regiment, came, and pursuit was made and the prisoner was brought in by one of the Highlanders and one of the Liberty Rangers, in about a quarter of an hour; that was the prisoner now at the bar; he was wounded, and was bleeding fresh in the left hand.* The two men told me, they found him concealed, armed with a pistol.

Court.—Did they say that in his presence?—Yes, I charged him with the murder of Hanlon, and asked him why he killed him? He said, "why did ye fire at me?" or, "why did he fire at me?" I am not certain which was the expression. The Liberty Ranger gave me the pistol he took from the prisoner. I examined it, and it appeared as if fresh fired from. I found it re-loaded. I drew the charge, and there was powder and ball in it.

Charles Henry Sirr, esq. cross-examined by *Mr. Campbell*.

At what hour was this?—When I entered the yard, it was a little before six.

Were you in your uniform?—No.

Was Hanlon in uniform?—No.

Did you produce any warrant?—No, I had not time to do such a thing.

Are you a magistrate of the city of Dublin?—No.

Court.—Is that place in the city of Dublin?—I understand so.

Mr. Campbell.—You had no warrant?—No.

If you had time you could not have produced one?—No.

You have already said, that on being asked

* It seems the prisoner had his left hand over his eye when he received Hanlon's shot, which lodged in his hand and contused his eye as above mentioned.

why he fired, the prisoner replied, "why fire at me?" did he not mean to convey, that he had not been fired at, he would not have fired?—I believe so.

Do you not believe that a very innocent man, if two men, not in uniform and without any authority, came into a room, and one of them snapped a pistol at him, would be justified in firing at them?—Yes; but I do not think that a labouring man would quit his ordinary work at which he was employed, to take up a pistol, without any thing being said or done to him.

You think that no honest man, if fired at, would return the fire?—I said no such thing. I would not fire nor attempt to use arms against any man who had not arms.

But the bare circumstance of a man having arms is a sufficient justification for you to fire?—I would wish to be first, certainly, when I saw him disposed to resist, and there was a charge against him.

William Holmes sworn.—Examined by *Mr. Attorney-General*.

Look at the prisoner and inform the Court whether you ever saw him before?—Yes; I did.

Mention, if you please, as distinctly as you can, the circumstances which occasioned our seeing him, and what passed?—It was all over, and he was after murdering the man before I saw him. Captain Bloxham passed with us, and I made all the efforts I could till I seized him up in a back bay-loft. I went to the loft and put up my head, and upon seeing him I cried out, "Here he is!" "I am," said he, "and if you offer to come here I will put this into you."

What did he say he would put into you?—A pistol.

Had he a pistol in his hand at the time?—He had, and he pointed it down at me.

Mention what took place then?—I jumped down to the other loft and called for assistance. One of the Highlanders came up first into the loft. I desired him to fire; just as Drury was behind him, and when the Highlander fired I got serjeant Warren's halberd and got up and seized the prisoner, who had a pistol in his hand, and I took it from him and gave it to major Sirr.

Where was this bay-loft?—In Pool-street.

How far from Pimlico, where the prisoner worked?—About eight houses; not far from the corner.

William Holmes cross-examined by *Mr. Mac Nally*.

This man was wounded?—He was, in the hand.

You had no uniform?—No.

He did not know that you were a conservator of the peace, or one of the Liberty Rangers?—No.

Neither did he know justice Drury?—I cannot say.

You put the highlander before you, and justice Drury behind you?—No, I went first, before the Highlander.

Here the case was closed on the part of the Crown.]

DEFENCE.

Mr. Mac Nally.—My Lords and Gentlemen of the Jury;—I stand in one of those situations in which, perhaps, it is the most difficult for a professional man to discharge his duty to his client with satisfaction to himself; because, it is one of those cases, where a defence cannot, from the nature of the charge against the prisoner, be stated by instructions to the counsel, so as to enable him to come forward with any kind of arrangement or preparation in his mind. I am obliged, on the very instant I may say, to extract a defence for my client from what has been given in evidence against him. But I have this consolation—I am addressing his peers—I am addressing that body of men, to which the constitution and the law have entrusted his life, and who will decide upon the case before them, with as much candour and as much attention to humanity, where there is room for a merciful disposition on the part of the jury, as if the man now upon his trial were of the first character in society.

Gentlemen, in this case you have much more evidence, in my humble opinion, to discharge from your minds, than you have to attend to. The attorney-general told you, with that candour which has marked his conduct through the laborious duty of this special commission, that trifling and collateral circumstances ought not to make a deep impression upon your minds. I am warranted in saying, that the doctrine is not singular; for upon the trials in England it was urged by that great character who now adorns our bench of chancery,* and who was then solicitor-general, in his address to the jury, in Hardy's case; and having his words, I am called upon to use them in preference to my own. In addressing the jury, that great man, following what was laid down by the attorney-general of England, upon the same trial, said, "I have even been taught to think, that a jury sworn to decide upon the life of their fellow subject, are to decide only according to the truth of the case, which is made out in evidence before them, without turning to the right or to the left, keeping perpetually the middle course, and attending only to the evidence before them, the law as it affects that evidence, and what is the conclusion they ought to come to, without entering into consideration, on the one side or the other, of any political circumstances whatever; and much should we have to lament, if political circumstances, or any circumstances, beyond the particular case before the jury, should in any degree weigh with them. The trial by

jury is the great safety of the state itself, and every individual member. If we suffer it to be perverted one way or the other, we remove from the constitution of the government, the great control which the people of this country have reserved in their own hands; that control which prevented the tyranny of Cromwell from reaching to such extent as it might have done; which first shook James 2nd upon his throne, and which at all times will I trust be found sufficient to preserve the rights and privileges of the subject, as well as the constitution of the state."

How do I apply this?—thus:—The prisoner at the bar is entitled, as a member of society, to that attention, which you, his jury, are bound to pay every thing that is urged upon his part by his counsel; and in doing that, you ought to divest your minds (which is the great task you have to perform), to divest your minds of the knowledge you have of the circumstances existing in this country, but not given in evidence on this trial. Having stated this, give me leave to ask, not what the defence is, but what has there been proved against the prisoner? In doing this, you have to consider only the facts which have been proved. If they are true, and amount to what the law calls treason, conviction must be the consequence. If false, or if doubtful, acquittal must be the result. But you have still more to consider, which is this:—You may believe that all the facts are true, and yet you have a right to acquit,—you must acquit if you do not give full credence to the witnesses. I will take upon me to say, that the only two witnesses, who have deposed to the overt acts laid in the indictment, are what the law calls approvers, that is, men actually concerned in the villainy which they describe, and pouring that upon the head of another man, which they themselves should answer for—making their offences the means of their own preservation. Consider them in this light. Suppose them tried. Have you not evidence enough from their own confession to convince you that they ought to be convicted of treason? Such conviction, if on record, would have closed their mouths for ever; for by such evidence they would be as dead in law, as if the halter which they merited, and would now hand over to the prisoner, had been twisted about their own necks, and they had suffered, as they ought to have suffered, execution upon a gibbet. Conviction would have deprived them of all credit,—in contemplation of the law they would be extinct, so that they could not open their mouths against the prisoner. Then gentlemen of the jury, how does he stand?—They are admitted as witnesses against him, because in law they are competent. But you are to look to their credit, and in doing so you are to consider this: What is it they have said against themselves? Not what they have said against the prisoner; because, before you should charge the prisoner with any thing they said against him,

* Lord Redesdale.

I submit, that you should examine from what source that evidence flowed. If you find the stream poisoned or polluted, look to the spring. If you find the stream foul and contaminated, you will not drink of the infected composition—you will not give credit to those men of corrupt and villainous hearts—conspirators with France—combining to do what? To put the king to death, to massacre his loyal subjects, to overturn the government, wading through blood to accomplish those nefarious objects, and having failed, now to save their own blood, coming forward to swear against the prisoner, and to make his blood the expiating offering of their crimes. But justice rejects with horror, such a sanguinary sacrifice. I will not pretend to say, they are destitute of all credit—that they are not entitled to some degree of belief; but their testimony is of such a nature, that unless it be corroborated in the cardinal facts which they have sworn to, and not in collateral circumstances alone, they ought not to receive any credit from you. Will you believe one of them swearing he had no hope of his life? Can you believe that a wretch, an assassin, embarking in a conspiracy to kill hundreds or thousands, would have any hesitation to save his own life by the conviction of a single man? The witnesses are acting upon the principle of self-preservation. They are taken as traitors;—they are instructed, or they know, that by becoming informers they are safe. Can any witness be impeached in so strong a manner as these witnesses are, out of their own mouths, or their own oaths? Then how far should their credit go? No farther than to establish the truth of their own turpitude: against themselves their own evidence ought to have weight; but, against any other man, should be light as the gossamer in the scale of justice. But it may be said, here are two witnesses swearing and corroborating each other in evidence of the same facts. I answer, if you cannot credit one, you would credit one thousand of the same description, swearing to the same fact, because the conclusion is the same. If one such witness swears to save his life, so would one thousand such witnesses, and your determination upon their credit must be the same as to all.

Gentlemen, I thought from the statement of Mr. Attorney-general, that witnesses would not have been brought forward to the transaction which passed in the carpenter's yard; however, that transaction has been brought forward; but I do insist, it is not for you on this trial to decide on that evidence. Whether this man has perpetrated an act of justifiable homicide—of manslaughter—or murder, it is not new before you; it is collateral matter, not relevant to the overt acts of treason charged, nor is it evidence that you can apply to any one of them; it is a specific offence not now charged upon the prisoner. Indeed it appears that he acted upon the defensive.

Self-preservation is the first law of nature. Providence has armed every creature, except man with instruments of defence; but man coming into the world, naked and unarmed, is gifted with understanding which points out to him, that as nature gave him no means, he must supply himself with weapons to guard against an attack; and ought not every man in these times to carry arms, who has right to do so, when his life may be the subject of such a want of protection?

Gentlemen, I am not urging this with an intention of presenting to your minds a sentiment that every man should have arms in his possession. The law has made the distinction. But if a man, who is authorized to carry arms, be attacked by another not having a civil authority, and who, though he might have been an honest man, had a well-known ferocity of disposition, has not formerly a right to defend himself? The prisoner did not commence the attack; the major began, by snapping his pistol at the prisoner. It did not go off. Was the prisoner to wait the event of a second? Was he to stand as a target to be fired at? If he might as well have said, "do not miss me a second time; direct your fire into my breast here is my heart—pierce it!" Human nature could not submit in this manner, and therefore, though the facts urged may have been improperly proved, for the purpose of showing a resistance, yet it becomes a circumstance in his favour: because it is founded in the feelings and principles of natural law. And I say this, that the town major of Dublin has a right by his office to take any man, without a warrant, unless the party be in the act of committing a felony, or breach of the peace or some such crime. Then every man may become a peace officer. The major's office is to manage the troops, and see the guards; he is not a municipal officer of the city; and I am ashamed to see the magistrates of Dublin admit such an usurpation of their privileges and their charter. If the transaction which has appeared, took place in the county, there major Sirr is a magistrate, having a commission of the peace for the county; but if he had shot the man, having no warrant or information upon oath, it would be a murder in contemplation of law, however government might deal with him as an object of royal mercy. I do not mean to say, that it would be a murder committed through malignity, but rather from an over zeal and ardour in what he might think his duty. He would have acted wrong, however, in contemplation of law; he cannot have justified the homicide, and no mercy of the crown would be his only resource.

Gentlemen, I have said sufficient upon this point. I will conclude with one single observation. I have spoken so often upon this subject, that it is possible many of you may have heard what I am going to inculcate into your minds. When you are considering the

atrocities of the charge, you will reflect, that in proportion to the atrocity ought the weight of the evidence to be. In the civil law, —which, thank God, does not rule in this free country, though in some instances it is received—I say, that by the civil law, the rule of evidence is, that the greater the offence, the less evidence is necessary for conviction. But our law says that in proportion as the offence is great, so ought the evidence be great and preponderating against the party accused, and so it is virtually expressed by the statute of treason.

Gentlemen, one observation more occurs; look into the dépôt—what do you find there? —a banditti of rebels. Most properly, his majesty's law officers have brought witnesses from that dépôt. I wish they had brought more; for how stands the prisoner? could he bring witnesses from that kind of hell, I would call it—from that nest of fiends—to give evidence in his favour? No; the crown could procure those witnesses, but the prisoner could not. The witnesses for the crown come forward under the promise, at least hope of mercy; they come forward upon the faith of actual promise, or the sanction of implied engagement, which insures protection to them. But in the nature of things, could the prisoner hold out such hopes to influence, or to procure witnesses? Let him promise what he would, or even give all he possessed, he could not prevail upon witnesses to come here. The witnesses for the crown, after their examination, go to a place of ease and safety. Those who might appear for the prisoner, know not how they might be dealt with; they might be committed to custody, and brought to trial, and perhaps convicted upon that trial. I draw this inference from what I have stated, that the persons concerned for the crown are enabled to secure the attendance of witnesses; but the prisoner cannot equally protect those who might appear for him.

In the course of the examination which has been had, you have heard some little collateral matters given in evidence, not attached to the overt acts in the indictment. In all this, you will see, whether the evidence be such as ought to convict the prisoner, taking into consideration, not so much the facts which have been given in evidence against him, as the character and self conviction of those men who have been brought forward to detail those facts.

[No evidence was given on the part of the prisoner.]

SUMMING UP.

Mr. Baron George.—Gentlemen of the Jury:—The prisoner, Henry Howley, stands indicted of two species of treason:—first, for compassing and imagining the death of the king; and secondly, for compassing to levy war against him. Several overt acts of these respective species of treason are stated in the

indictment; and if you believe that the evidence shows the prisoner to be guilty of any one of these overt acts, in that case you should find him guilty; and the consequence will be the same as if you found him guilty of every overt act contained in the indictment. I will state the overt acts to you. The prisoner is charged with being one of a number of conspirators, who had agreed to levy war. You, gentlemen, are to find, whether he was one of such a conspiracy. He is charged with having assisted in the providing and collecting of arms, causing arms to be made for the purpose of levying war; and that he procured and hired a certain warehouse, in which arms and ammunition were to be collected and kept in order that divers traitors might there receive them, and use the same for levying war against the king; and that he, the prisoner, did prepare and levy against the king, the war which was raised and levied in consequence of that conspiracy.

The learned judge then proceeded to state the evidence which had been adduced in support of the indictment, and made occasional observations. He said, that the prisoner did not use a fictitious name in taking out the lease, that persons engaged in traitorous designs generally used fictitious names in the prosecution of their plans; but that the prisoner at the bar did not do so.

The evidence of major Sirr did not go in direct terms to support any of the overt acts in the indictment. It was matter for the consideration of the jury, so far only, as it tended to show a consciousness in the mind of the prisoner, of guilt, when he took up a mortal weapon and killed a man, rather than submit. If any notice were given to the prisoner, of the particular crime charged against him, and after that he stood upon the defensive, rather than submit to a trial, it would look like a condemnation of himself. But it did not appear in this case, that the prisoner had any particular notice of the charge for which he was taken into custody. He retired into a recess, and stood upon his defence till he killed a man; that might go to show, that the prisoner was conscious of some crime or other for which he was liable to punishment, but not that he was conscious of *this particular crime* charged upon him by this indictment, because he had no notice that he was charged with any particular crime; and therefore the evidence does not establish the purpose for which it was produced. The prisoner had no intimation, that these were officers of justice who were in pursuit of him; and it is a prudent thing, where legal process is to be executed against a man, depriving him of his liberty, that some notice should be given of the persons who execute that process, and the authority under which they act; at the same time it must be known, that resistance of this nature is highly criminal.

Upon the evidence, the learned judge said, he would submit a few observations. There

appeared to be most direct, and positive, and indubitable evidence, that the prisoner took the premises, which were afterwards used as the dépôt, and became the tenant of them; and then the material fact for the consideration of the jury was, whether when he took them, he did so, for the purpose of making them a store-house of implements of mischief which they afterwards contained? The intention with which a man does any thing, is best discovered by his subsequent actions. It is stated in evidence, that the prisoner was extremely anxious to get immediate possession, and that he assigned as a reason that he had commissions to execute, which he would lose unless he got possession soon. The next thing which occurred was, not only, that he worked there, but he induced others to work there in making those weapons, which were afterwards used in the insurrection for the purpose of effecting a revolution by force, by murder and massacre. The purposes for which the dépôt was used, appears from the testimony of Fleming and Finerty; they both had access to the place, being of the same description of persons who resorted there; and if the jury believed their testimony, the works in which all the persons there were employed were for the purposes of treason. These witnesses were embarked in the same object—they have acknowledged by their own evidence, that they have committed treason, for which their lives are forfeited by the law of the land; and undoubtedly, testimony coming from persons acknowledging they are capable of committing, and who have committed such great crimes, ought to be received with great caution. According to the law of the land, an accomplice in any offence, from treason down to the lowest crime, is a witness admissible in a court of justice; but his testimony is always left to the jury, who will determine upon the credit which such witness is entitled to—and a jury would be justified, if they believed the testimony of such a witness, standing naked and uncorroborated, to find the person against whom it was given, guilty of even a capital crime. In general, however such evidence is received with caution, and the jury look for circumstances of corroboration. Here they would observe, that this case does not rest upon the testimony of a single accomplice, there is the concurring testimony of two accomplices.

But it is said, that the testimony of both is derived from the same tainted source. The jury would consider, how far the testimony of those two men was consistent with each other. But the most material consideration was, how far their testimony was corroborated by the other witnesses in the case, showing, that what they have said of the prisoner is true. It was alleged, that Finerty and Fleming were in that depot, and having entered there with the wicked intention which they have acknowledged, their evidence of the manner in which the prisoner was employed, should be con-

sidered as the charge of a guilty, upon an innocent man. But what are the additional facts? The witnesses say, the prisoner worked there as a carpenter, and there is evidence that he became tenant of these premises—that he was of that employment, and that he took them with an immediate pressure of the possession, stating that he had commissions to execute which he would lose if he did not obtain instant possession.

The prisoner has produced no evidence to show, that he employed the place in any useful or innocent purpose; but all the evidence in the case went to show, it was employed for forwarding the worst and most criminal designs; and therefore, the jury would consider whether, when the prisoner took these premises, he did so with the view imputed to him or not? Undoubtedly, every thing which is said, tending to reflect upon the testimony of accomplices, deserved the attention of the jury. No doubt, men acknowledging themselves ripe for murder might well be suspected as capable of committing perjury. There is a good reason why their testimony should be received with great caution, but no reason why it should be altogether dismissed for consideration.

When traitors have for their object an attack upon the castle, and the taking of the city of Dublin, it must naturally follow, that a immense number of men must be employed to carry such a design into execution. It cannot be effected by a single man, or by a few men. It is a work which requires the co-operation of a great number of accomplices, of various classes and descriptions. And therefore the danger to which men are exposed, when they act with conspirators of that sort, arises not only from the resistance which they must meet with from the brave and loyal men who are to be attacked, but from the suspicion which the conspirators have of each other, being obliged to associate with many profligate and criminal men. The danger to arise from such conspiracy is much diminished by want of confidence in each other, and the testimony which they give against each other when the hand of the law falls upon them. It is therefore necessary to give protection to such evidence; it should be always received, but it was not desired that it should be received with every degree of credit. Every channel leading to a discovery of secret conspiracies should be at all times open; but a jury should be cautious in believing evidence of that description, unless it was supported by other circumstances, which gave weight and probability in addition to the intrinsic effect of the evidence itself.

Upon the whole of the case, the jury would consider, therefore, whether the prisoner was one of the conspirators charged in the indictment? whether that conspiracy had for its object an attack upon the king's government; and to effect a revolution by force? whether he took the warehouse in order to store it with

arms for the purpose of that conspiracy? and whether he levied war, or joined with those who did? for in treason, every one partaking in the crime is a principal. It was competent for the prisoner to show the purpose with which he took the warehouse, and that he took it for a lawful occasion; but no evidence of that sort was given. If the jury believed the charges against the prisoner, they would find him guilty; if they had any rational doubt, it was their duty to acquit him.

The jury without retiring from the box found the prisoner GUILTY.

Mr. Attorney General prayed that judgment should be pronounced upon the prisoner.

The indictment was read, and the prisoner was asked what he had to say, why sentence should not be passed upon him.

Prisoner.—I have nothing to say, but to beg for some time to make my peace with God.

Mr. Baron George.—Henry Howley; you stand now convicted of the greatest crime which any man can be guilty of in this world. It is astonishing, how any human creature, with a heart to feel for his kind, or a mind retaining the slightest impression of a future state, could remain for months together, contemplating the horrors which must inevitably take place before a revolution could be effected. Did you not think, before you could effect your purpose, of the innumerable murders of decent and honest, not to say great and virtuous persons, which must have taken place, and without giving to them the warning of one moment? A multitude of you take society by surprise; you sally forth upon your unarmed and unresisting fellow creatures and you put to death, men, who had never committed the remotest offence against you. But it is not only the greatest weakness, but the greatest folly that can be conceived. Has it ever been heard that such efforts of rebellion have been successful? If you had been acquainted with the history of your own or other countries, you must have known that every attempt of the sort has been defeated. Your attempt, praise be to God, has failed; and under his divine protection every future project of a similar nature will end in the same manner, in the destruction of all those who enter into it, either by the sword of loyalty or the hand of the law. Nothing can result to the instruments of such designs but complete ruin; death to themselves, beggary and misery to their wives and children; yet such is the infatuation which marks their conduct, that although they every day see the unhappy victims of similar delusion swallowed in the gulph of destruction, they are not to be instructed by their fate. But I trust, this wretched infatuation will end here. I trust, that if there are still in this country, men, who are not acted upon by grace, to relinquish their wicked designs against the peace and happi-

ness of society, that they will at least yield to the suggestions of common sense, the least particle of which would direct them to consult their own safety by withdrawing themselves from projects utterly impracticable, and inevitably destructive. How is it possible that any man could propose success to himself in such attempts? How hope, by such means, or for a single moment to oppose a regular force of three thousand men, horse, foot, and artillery, under the command of government; besides such an armed host of brave yeomanry, independent of the mass of unarmed loyalty, which in such a crisis would fly from every quarter to the support of government and civil order? Did any of you ask yourselves what would have been the consequences even of the momentary success effected by a deluded rabble, running suddenly upon a course of murder, glutting their wicked dispositions, and gratifying their malice? Could you or any man suppose that any thing beneficial to the country could have been effected by such men? It is lamentable to reflect on the horrible doings of the 23rd of July. Of the crimes of that night you appear to have been a prime mover; the conspirators placed great confidence in you; you were the tenant of these premises, where were stored those evils which have partially fallen upon the country, and which were intended to involve it in general horror and destruction; and without repentance and remorse, you were for three months or more deliberately preparing to let loose this curse upon your fellow citizens and countrymen. Pray, what must you have supposed to be the nature of that God who governs the universe, if you imagined that he would allow such crimes to go undetected and unpunished, or that he would not visit the land with all the plagues of divine wrath, if those crimes had not been avenged by the hand of justice?

I trust, unhappy man, that you will use the time allowed you here, in a sincere effort of repentance and in making all possible atonement for your grievous offences, before you appear before the throne of that all-wise and just God, who entertains peculiar horror of those crimes, which affect the peace and order of society, all whose ordinances enjoin the preservation of his creatures, until the natural time destined for their departure from this life, unless falling beneath the just infliction of the law; for it is expressly stated that "Whosoever sheds the blood of man, by man also shall his blood be shed." The laws of God and man require the sacrifice and your life must be rendered up an atonement, such as it is, to the injuries which you have assisted in bringing upon your country.

The learned judge then pronounced the sentence in the usual form.

The prisoner was executed on Wednesday the 28th of September, at the front of the prison in Green-street.

666. Trial of JOHN MAC INTOSH for High Treason; before the
Court holden under a Special Commission at Dublin,
Saturday October 1st: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.

Saturday, the 1st of October,† 1803.

John Mac Intosh was this day put to the bar for trial.

Counsel had been assigned him, at his own request, upon a former day, and he was also previously arraigned upon the following indictment:

County of the city of Dublin to wit } THE jurors of our lord the king upon their oath present that John Mac Intosh late of Thomas-street in the city and county of the city of Dublin carpenter a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king should bear to our said lord the king wholly withdrawing and contriving and intending the peace and common tranquillity of this kingdom to disquiet molest and disturb and the government and constitution of this realm to change subvert and alter and our said lord the king from the royal state title honour power imperial crown and government of this kingdom to depose and deprive and our said lord the present king to death and final destruction to bring and put he the said John Mac Intosh on the twenty-third day of July in the forty-third year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death

And that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations and compassings aforesaid he the said John Mac Intosh as such false traitor as aforesaid on the said twenty-third day of July in the said forty-third year

of the reign of our said lord the king and divers others days and times as well before after the said day at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did meet and combine conspire confederate and agree and with divers other false traitors whose names are to the jurors aforesaid unknown raise levy and make public and cruel refection rebellion and war against our said sovereign lord the king within this kingdom and at another time to wit on the twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said John Mac Intosh as such false traitor as aforesaid in the prosecution of his treason and treasonable purposes aforesaid falsely wickedly and traitorously did arm himself with and did carry one blunderbuss and one pistol with intent to associate himself with divers other false traitors armed with guns swords pikes whose names are to the said jurors known for the purpose of raising levying making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and against the faithful subjects of our said lord the king

And that afterwards to wit on the twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said John Mac Intosh as such false traitor as aforesaid in the prosecution of his treason and treasonable purposes aforesaid falsely wickedly and traitorously did procure great quantities of pistols gunpowder and shot and did make and prepare and did cause and procure to be made and prepared a great number to wit one thousand pikes with intent that divers other false traitors whose names are to the said jurors unknown should be armed with the said pistols and pikes and being so armed should use the same and the gunpowder and shot aforesaid in and for the raising making carrying on insurrection rebellion and war against our said lord the king and in and for the committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king within this kingdom

And that afterwards to wit on the twenty-third day of July in the said forty-third

* From the Report of William Ridgeway, esq. barrister at law.

† The preliminary proceedings will be found at the commencement of Kearney's case.

year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said John Mac Intosh as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the said jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes then and there unlawfully and traitorously assembled and gathered together against our said lord the king falsely wickedly and traitorously did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said John Mac Intosh against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

And the said jurors of our said lord the king upon their oath do further present that the said John Mac Intosh being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said sovereign lord the king and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom and in order to fulfil and bring to effect the said traitorous compassing imaginations and intentions last mentioned of him the said John Mac Intosh he the said John Mac Intosh afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of him the said John Mac Intosh against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

VOL. XXVIII,

The prisoner pleaded Not Guilty.

The following jury were now sworn, after six were set by on the part of the crown, and eighteen were challenged by the prisoner:

Robert Law, jun.	William Courtney,
Philip Abbott,	William Dixon,
Mont. Crothers,	Francis Foster,
Robert Cantrel,	John Hodges,
Edward Butler,	Charles Warmingham,
Charles Lett,	Samuel Warren,

The prisoner was given in charge.

The counsel and agents for the crown and for the prisoner were the same as on the last case, with the exception of Mr. Bethel.

Mr. Townsend opened the indictment.

Mr. Attorney General.—My Lords and Gentlemen of the Jury;—You, gentlemen, have attended to the indictment, by which the prisoner is charged with the crime of high treason; you have heard him deny that he is guilty of that crime, and it will be your duty to attend to the evidence which will be offered upon the part of the crown to substantiate the indictment. In doing this, it will be our duty, first to submit to you that sort of evidence which has hitherto been resorted to, for the purpose of establishing, beyond difficulty or doubt, the existence of a treasonable conspiracy and rebellion, and then to call your attention to those parts of the case which affect the prisoner personally as engaged in that conspiracy and rebellion, and participating in the general crime, of which so many have been already accused and found guilty.

The principal overt acts in the indictment, which demonstrate the prisoner's guilt, and which will be chiefly relied upon, are, that he, with others, collected arms and ammunition for the purpose of rebellion, and that afterwards, upon the 23rd of July, he appeared, armed, aiding, and assisting other rebels in levying war against the king. Gentlemen, if we establish one or other of these overt acts, the prisoner must be found guilty under the indictment which has been preferred against him.

Gentlemen, the conspiracy having been formed, it was found necessary, in the course of last spring, to have some two or three houses taken for the purpose of collecting arms and ammunition with secrecy. The prisoner was accordingly employed to take the house, No. 26, in Patrick-street, where he continued to reside from the month of May, in this year, when he took the demise, down to the explosion, which took place upon the 16th of July. It will appear, that the prisoner concealed in the house a number of short poles, the use of which was not known for a considerable time, but it is now conceived that they were intended to be screwed together, and to form pike handles. He also cast several bullets, and at length converted his house into a gunpowder manufactory:

but he had not proceeded far in this project, when an accident occurred, by which his designs were defeated. Providentially upon the 16th of July, an explosion took place in his house, which, though not loud enough to give public alarm, was sufficient to frighten his neighbours, who accordingly sent for the fire engines, conceiving it possible that the house might be in flames. You will observe the prisoner's conduct upon this occasion; it will appear, that instead of calling in the assistance of the fire engines, or of his neighbours, the first thing he did was to put a padlock upon the door, and then to appear at an upper window, from which he declared, that what happened proceeded from some dyers who were making an experiment, and that all was safe, and that he did not want assistance; and he earnestly entreated his neighbours and the fire engines to withdraw. These circumstances having been the next day communicated to a peace officer, were not perfectly satisfactory to him, and imagining from the anxiety with which the possession was held, that something material might be discovered, he and his assistants broke open the door; they found two chests, in one of which were fifty bullets and a volume of Volney's Revolution of Empires! In a back room upon the same floor, they found a mill or an instrument with a roller, which I am instructed had evident marks of having been lately employed in grinding saltpetre. They also found a number of short poles about three feet each in length, and a small quantity of unfinished gunpowder. Search was made for the prisoner, but he had absconded; and a man of the name of Keenan (who had been wounded, partly by the explosion and partly by the glass of a window, which he was breaking to procure air) was arrested. He was closely examined, but died without making any discovery. A labourer also of the name of Byrne, who attended the house, was taken up and confined, but he has always denied his knowledge of what his employer was about, and there is reason to believe he was ignorant of it.

Gentlemen, these circumstances might, at the outset, be sufficient to satisfy your minds, if we had no other evidence to produce. The fact of his taking the house at the particular time he did, his employing it for these purposes, his locking the door, and resisting the interference of the neighbourhood, would satisfy the mind of any man, that he was concerned with others in that conspiracy which afterwards broke out.

The house being thus deranged, it became necessary for him to look for another place equally friendly to his horrid purposes; and without mentioning where he thought proper to fix his abode, I believe, gentlemen, you are already attending him from this house in Patrick-street to the celebrated depot in Mass-lane. We trace him there lending that assistance to the rebellion which the accident

had prevented him from continuing in Patrick-street. He there practised his trade as a carpenter; he rounded pike handles; he filled beams with gunpowder, for the purpose of explosion. We find him afterwards continuing the same line of conduct upon the 1st of July. He worked there the entire of the day, and particularly had in the evening been preparing the beams and other machines for destruction.

Having thus brought the rebellion to a crisis, he did not desert the plan which was so very instrumental in forwarding it. He appeared armed with a blunderbuss in the street; he attended the crowd; he marched into Thomas-street, and he was one of the body who actually stopped a carriage in which were two gentlemen and a lady. The way in which those gentlemen received were the pikes, and therefore I attribute nothing of this transaction to him, than his satisfaction, a witness to that most lamentable and horrid catastrophe.

Gentlemen, as soon as the business of the evening was over, I discover nothing more of the prisoner; I presume he fled. I am unable to trace him through the mountains of Wicklow, where there is strong presumption he went with other leaders; but in the city of Arklow, he was taken up as a suspicious person. He was asked what he was, what he was going, and what was his name. He said his name was Magrath, that he was a trade a millwright, that he was going to Waterford upon business. If any thing were wanting, this false account of himself and his flying so lately from Dublin, connected with his proceedings in Patrick-street, were strong indeed to fortify the other evidence which we have to offer to you, and which you credit, will leave no doubt, that the prisoner is guilty of the overt acts laid to his indictment.

Gentlemen, having stated the evidence which will be submitted to you, I shall not trespass upon you farther. You are apprised from your knowledge of the duty of jurors that you are to discharge your minds of every thing, but the evidence which you shall hear. I have endeavoured to detail it in such a manner as to remove any difficulty in comprehending the witnesses who shall give it; and you will pronounce such verdict upon the whole as will be salutary to the public and satisfactory to your minds.

Patrick Codd sworn.—Examined by Mr. Mayne.

Do you see your name subscribed as a witness to that lease? [showing the witness a lease]—I do.

Is that your hand-writing?—It is.

Did you see it signed and sealed by the person?—I did.

By whom?—By Mr. Holmes and Mr. Mac Intosh.

Look at the bar; do you know the prisoner?—I do.

Did you ever see him before?—I did.

Was the prisoner the person who signed the lease?—That man signed the lease.

Court.—By what name did he sign it?—I did not particularly notice.

Look at the lease, and see what name he wrote?—John Mac Intosh.

Mr. Mayne.—Did you understand from the prisoner what trade he was of?—I heard him say he was a carpenter.

[This was a lease of a house, No. 26, in Patrick-street, bearing date the 30th of May, 1803.]

[The witness was not cross-examined.]

James Mooney sworn.—Examined by *Mr. Townsend.*

Where do you live?—In Patrick-street.

At what number?—No. 25.

Do you recollect an explosion having taken place any where near you some time since?—I do.

In what house?—Next door to me.

At what number?—No. 26.

Upon what day did that explosion take place?—Upon Saturday before the rebellion; the 16th of July.

At what hour?—Between six and seven in the evening.

Were you then at home?—I was at home.

You heard a noise?—I did.

Was it very loud?—It was pretty loud.

What did you do?—I heard people in the street cry out that the house was falling. I went into the street, and I saw a splinter of fire drop from a window.

Upon seeing that fire, what did you do?—There was a report that the house was on fire; and I returned back to take care of my own house.

Did you come out afterwards?—I remained some little time, attending my own business, and then I came out, and saw Mac Intosh looking out of his window.

Do you mean the prisoner?—Yes.

Did you hear him say any thing that time?—No, sir.

Where did you go then?—I went into a gateway under his house, and there I saw a piece of linen.

Did you go behind the house?—I did.

Under which house is the gateway?—Under the house in which the explosion took place; I saw a piece of linen on fire.

Did you look at the back of the house?—I did.

What was there remarkable?—I saw the windows broke out.

How many?—Three of them.

Did you see any sashes?—There were no sashes in them at all.

Did you see the prisoner there afterwards?—Yes, in some time afterwards, he came out of the yard, belonging to the house, into the gateway.

Was the passage between the yard and the

gateway left open?—No; immediately upon his coming out, he locked the door.

Did you say any thing to him?—Yes; I wanted him to let me in with him to see whether the fire was extinguished.

Did he let you in?—No, he refused to let me in, he said there was no occasion.

Was there any thing particular in his appearance at that time?—He seemed to be frightened, and a little alarmed; the cape of his coat and hair was singed.

Was any thing more said?—I wanted him to take in some gentlemen who were there, but he refused to let any of them in.

Did he say any thing?—He told me he would satisfy me.

Court.—What did he mean?—That the fire was out.

Mr. Townsend.—Did you see him afterwards in the course of the evening?—Yes, he came afterwards in the course of the evening into my house, and I brought him into my parlour; and he told me it was dyers who were trying experiments in the house.

On which side of your house was the one in which the explosion took place?—On the south of mine.

Then your house bounds his upon the north?—Yes.

James Mooney cross-examined by Mr. Mac Nally.

You were a good deal frightened yourself when you heard this explosion?—A great deal. And you were out of the house?—No.

You were not in the house when the explosion was?—No.

And you were frightened for fear of being blown up?—I did not think it was powder in it.

You do not know it was powder?—No.

You were frightened?—Yes.

And you would be more so if your hair was singed?—Yes.

Then there was nothing extraordinary in the man's appearance, seemed frightened, when his hair was frizzled?—There was something strange in his appearance when he refused to let me in.

You were not yourself as calm then, as you were upon other occasions?—No.

He said there was no danger, when he locked the door?—He did.

It might be prudent to keep people out?—It was reasonable.

Upon such occasions, there is plunder sometimes by the mob?—I cannot say.

Have you never heard of such a thing?—I have.

You saw the prisoner in the evening?—Yes.

He did not run away?—No.

At what time did you see him?—Immediately after the explosion.

Did you see any thing removed before he asked you to go in?—He did not ask me to go in at all.

Why, what did he say?—He said there was no occasion to go in, but he would satisfy me; and he said it was silk-dyers trying experiments.

There was nothing blown out but the piece of linen and the splinter of fire?—No, but the sash.

You saw nothing blown out?—Nothing but the fire and the linen.

Do you know whether the sashes were burst out?—No.

Were the sashes blown out from the frames?—I cannot say; they were blown out before I saw them.

Court.—Had you known them before?—No.

Were the sashes out?—They were.

Were they down in the yard?—No, I did not see them.

Was the linen blown out?—I cannot say.

It was on fire?—It was.

What kind of linen was it?—Something like a piece of shirt.

Jury.—Was the fire properly extinguished before the prisoner came out?—I cannot say, for I did not go in; there was a great smoke.

Was any engine necessary?—No.

Was there any smell?—There was a smell of powder or sulphur. There was a report it was coiners was in it, and that made me easy.

Edward Wilson, esq. sworn.—Examined by *Mr. Attorney General.*

Do you recollect the explosion in Patrick-street?—I recollect to have heard of it.

At what time?—On Sunday morning the 17th of July.

Did you go there?—Hearing of the explosion, and that two men were miserably burnt by it, one of whom died since, and that the fire-engine keeper was prevented from acting, I went to the house to inquire.

Mr. Mac Nally.—I must object to any evidence of what passed upon this inquiry.

Witness.—In consequence of what I heard, I brought a number of peace officers with me, on the evening of Sunday the 17th, to the house in Patrick-street, next door to Mooney's.

Court.—Was there a gate way there?—There was, my lord; part of the house goes over a gate-way.

Mr. Attorney General.—Was it on the north or the south side of Mooney's?—It was on the south side of Mooney's. When I came there, I found the house secured by a padlock without side. I forced off the lock, and entered the house.

Mention the most striking parts of the furniture which you saw?—I went up stairs to the first floor, and in the dining room, I found two chests; in the till of one of them there were fifty newly-cast musket balls; there was a book, the title of which was, "Volney's Ruin of Empires;" a number of carpenter's tools and some powder. There was a pallet, or bed, where some person lay.

In the back room, on the same floor, I found the fire place was torn by some explosion; it was broke and scattered about; and near the fireplace was a mill standing, with an iron table covered over with a black powder.

Court.—Had it the appearance of having been employed in making powder?—Yes, my lord; I tasted the powder, and it was certainly gunpowder. In several parts of the house there were appearances of the explosion. The ceiling was all black, particularly near the back part, where the windows were they were blown out.

How did the windows appear?—They were out. I am not sure now, whether the frame were out, but all the sashes and glass were gone. The pier between the two windows was cracked, and I was almost afraid to go in the house.

Did the crack appear to be an old one?—No, my lord, it was a fresh crack, made by whatever caused the explosion. There was a large deal table covered over with a sort of white powder, and on removing some of it, I found the surface of the table burned in holes. In the lower part of the house, I found between one and two hundred handles, which I took to be pike handles; they were rather larger than the handles of sweeping brushes.

Mr. Attorney General.—They were not so large as those which you saw in Theres-street?—These were only three or four feet for closer work; and there were six bayonets in the next house, which was a new house, and which I was told belonged to—

The Prisoner's Counsel objected to the evidence proceeding in this evidence.

Mr. Attorney General.—Was there any communication between the two houses?—I came out of one door and went into the other.

Where did you find the bayonets?—Behind a chimney of the next house: I also found 100 rounds of ball cartridge.

How many bayonets did you find?—Five with wood in the sockets of them, as if cut off from some of these handles.

Mr. Campbell.—My lord, I must object to this evidence being given to affect the prisoner.

Court.—Let the witness state again how the two houses were situate with respect to each other?

Mr. Attorney General.—My lord, I think rather refrain from offering the evidence. The case will be sufficiently clear and intelligible without going out of the particular house. Did you find any thing more than gunpowder in the house, in which the explosion was?—I found some unfinished; it was in large and small lumps; it appeared to me to be gunpowder in an unfinished state; it was scattered about among the furniture.

You were not there before the 17th of July?—No.

Do you know what saltpetre is?—Yes.

Did you find any there that day?—I found a quantity in a mason's hod at the rear of the house. There is a communication between some of the yards, and I am not sure, whether it was exactly in the rear of the prisoner's house or not.

How did you go to it?—I went into a space at the rear of both houses; I believe it was through the adjoining house; I found in the prisoner's house a number of metal rings, as if for the purpose of fitting upon the handles.

Court.—Did you try any of them?—No, but they were of the size of the handles.

Did you examine the whole of the house, No. 26, in Patrick-street?—I did, my lord.

Did you see any appearance of silk-dyer's work?—Not the smallest of any kind; there was no silk or dye stuff.

[Not cross-examined.]

Wheeler Coultman, esq. sworn and examined.

—The Witness gave the same testimony as upon the former trials. — [*vide*, Kearney's case, page 719.]

A writing desk was produced, which Mr. Coultman said he saw in the dépôt.

Serjeant Thomas Rice sworn and examined.—

This Witness gave the same evidence as before. — [*vide* Kearney's case, page 722.]

John Fleming sworn.—Examined by
Mr. Attorney General.

Did you ever see that desk [pointing to the same desk Mr. Coultman had identified]?—Yes.

Where did you see it?—In the store.

Whereabouts is the store?—In Mass-lane.

Court.—The place called the depot?—Yes.

Mr. Attorney General.—Look at the prisoner; did you ever see him before?—I did.

What is his name?—Mac Intosh.

Do you recollect where you saw him?—I saw him in the store.

Do you mean the same dépôt where the little desk was?—Yes.

Did you see him occupied in any particular way?—I saw him working at different kinds of work.

What trade is he of?—I heard him say he was a carpenter.

What did he work at?—I saw him planing them things they call pike handles.

How long before the 23rd of July?—A few days; not many.

Do you recollect happening to see him that day?—I did; I saw him in the store all along that day.

Did he do any thing that day?—He was working.

Did you see him do any thing particular besides working at the pike handles?—I saw

* The cross examination by the prisoner's counsel having admitted that he was in the dépôt, it was not thought necessary to give any of the contents of this desk in evidence.

him at beams; I did not know what they were.

What was he doing to them?—He was stuffing them with some thing.

Court.—Were the beams hollow?—Yes they were.

Mr. Attorney General.—Could you perceive what he was stuffing them with?—I suppose it was powder and something; I cannot well tell what it was.

Was that in the dépôt?—Yes.

At what hour did the gentlemen leave the dépôt?—After nine.

Court.—Did you see the beams removed out?—I did, some of them.

Before nine o'clock?—Yes.

Can you say whether the prisoner Mac Intosh, went out with the others?—He went out with the party.

Had he any thing in his hand?—He had a pistol and a blunderbuss.

Did you see afterwards what street he went into?—Into Dirty-lane, and from thence to Thomas-street.

With the same party?—Yes.

What was the first thing you observed particular in the prisoner's conduct, when the party went out?—The first thing I observed was a firing along the street.

Did you see the prisoner take any part in that amusement?—No more than any other man.

Was there any man killed?—I saw a trooper killed. The prisoner fired at him, but I do not know whether he hit him or not.

There were many shots fired at him, as he rode down the street?—There were.

Court.—What became of the trooper?—He fell in the channel.

Mr. Attorney General.—State what more happened?—There was a carriage stopped with two gentlemen and a lady in it, and I saw the prisoner at the side of the carriage.

Was the prisoner present during the transaction?—He was.

You need not mention any names; but state what passed?—I saw two men stabbing one of the gentlemen, who was upon the ground.

Was that done by the same party which the prisoner accompanied with his pistol and blunderbuss?—It was.

Could you perceive what became of the lady?—I cannot say; I saw her going off; but what became of her I cannot say.

Did you see Mac Intosh that night after?—Yes; he came over to the corner of Meath-street, where I was standing.

Had you any conversation with him at the corner of Meath-street?—He asked us to go up the mountains, or the army would cut us off, as the party left us.

What became of the officers?—I cannot say, after they left Thomas-street.

Then your officers left you, and the prisoner advised you to make to the mountains, lest the army should cut you off?—Yes.

Where did you reside for some time previous to this transaction?—At the widow Dillon's, at the White Bull.

In what situation were you there?—An hostler.

How is the dépôt situated with respect to the White Bull-inn?—It just joins, and there was a door broke between Dillon's yard and the stores.

Then it was not easy to carry on any matter there without your knowledge, as being the hostler?—I knew a good deal of it.

When did they introduce you to the secret?—A good while ago; I cannot say how long.

Was it some months?—Yes; two or three months before the 23rd.

As you did not go to the mountains, I suppose you thought it safe to go somewhere else?—I did; I went to New-street, to some house there which I never was in before, and remained till Tuesday, and then I went to Thomas-street, and from that house to the county of Kildare.

You were arrested there?—I was.

And in consequence of that you told every thing you knew about the business?—I did.

Do you recollect the explosion which took place in Patrick-street?—Yes, sir, I do.

That was a week before the insurrection broke out?—It was.

Do you recollect having been applied to by any person for a bag?—I do, by Mr. Palmer, and Quigley, and Mr. Emmet.

Did you ever see any of these persons in the dépôt?—I cannot say that I saw Palmer in the dépôt; but I saw all the others there.

Was the prisoner with them?—Yes.

What did they say they wanted the bag for?—To carry powder.

From what place?—I suppose from Patrick-street.

What did they say?—They said it was to get away the powder they brought out of Patrick-street.

Court.—Was it on Saturday night, they told you that?—It was on Sunday morning.

Mr. Attorney General.—At what hour?—It was not eight o'clock.

Did they say to what place they intended to carry the powder?—I knew it was to the stores.

Mr. Wilson sworn.—Examined by the Court.

At what time did you go to the house in Patrick-street on Sunday?—In the evening. I went first between twelve and one and looked about the place; but finding the house locked and not having any assistance at that time, I did not go in.

John Fleming cross-examined by Mr. Campbell.

When did you commence the occupation of traitor or rebel?—It is a good while since I was sworn first.

As near as you can guess, tell me, it is six or seven years ago since I was sworn.

How long is it since you were sworn to this last business?—I never was sworn to it last.

Then what did you mean by saying, you were sworn first?—I mean the first business of the United Irishmen.

Were you ever sworn a second time to a rebel?—No, I was not.

At what time did you commence it without being sworn, in the last business?—Three or four months before the 23rd.

Recollect now particularly, was it six months?—It was about March or April; a knowledge of it; I cannot well tell the time.

You saw what was doing in the dépôt; you saw pikes making there?—I did.

Did you not know they were intended for the perpetration of murder?—I knew they were for some bad design, no doubt of it.

Did you not know they were for murder?—As I was told they were.

Did you believe it?—As I was told, I believed it.

Did you give information of these pikes making?—No.

In not doing so, did you act the part of a honest man, or of a savage?—I was acting an honest part.

Did you conceive you were acting an honest part?—I did then.

Do you conceive now, that it is not a bad thing to commit murder?—I think it is bad.

Not altogether so bad, but that sometimes may be worse?—There cannot be any thing worse.

At what time did you begin to think it a bad measure?—It is a good while.

It was since you were taken?—It was.

How soon did you give information after you were taken?—It was a good while after I was taken, before I gave information.

You saw a carriage stopped and men pikes?—I did.

After that you went with the party?—I did.

And even that did not make you endeavour to make my escape as well as the rest.

Court.—From whom?—From the army.

Mr. Campbell.—Did you not continue with the party after the murders were committed?—I continued with them till they went, and I went to New-street.

Did you continue to be of the same opinion as when you first became a rebel?—I considered it very bad.

Then why did you stay with them?—I considered to make my escape along with anybody belonging to me.

I ask you, upon your oath, did you know at the time the man was piked at the ear?—Who he was?—No, I did not.

Did you hear at the time?—No.

Did you hear since?—I heard it was lord Kilwarden.

Do you not believe he was?—I could not believe it at the time.

Did you not hear that lord Kilwarden was killed in his carriage that night?—I saw a man piked in a carriage.

Do you not believe he was lord Kilwarden? I did not know him at the time.

Were you examined before upon this subject?—I was.

Did you give the same evidence before as you do now?—I swore to every thing that was true.

Did you tell any thing relative to the murder of lord Kilwarden?—I do not think I did.

And why did you not tell the truth?—I am not asked about it.

Did you ever hear that any person was forced to the ranks of the rebels that night?—I did not hear it.

Do you believe it?—I cannot believe anything but what I see.

Do you profess any religious doctrine? Do you believe in God?—I do.

Did you ever see him?—No, but such a thing as you asked me is different.

Do you not believe there were parties placed in the dépôt upon some of the persons who were brought in there?—I was told there were eight men.

Do you not believe it?—I was told they were in it.

Have you any reason to disbelieve it?—There were parties placed to keep it from being taken.

Were there any parties to keep people here?—There were many kept there, until the evening came.

Were not many kept, whose principles were not known?—I suppose so.

Were you detained?—I was always permitted to go in, or out.

Were you not the person who brought Mac Intosh into the dépôt?—No.

Who brought him in?—I cannot say; for I never saw him, till I saw him there.

Court.—Upon what day before the 23rd did you see him there?—I think it was Tuesday, and he went only twice to see his wife.

Mr. Campbell.—Were you not the person who accompanied him as a sentry?—No; I was a messenger sent for him. The woman came and asked for Mac Intosh; he answered and came out, and was in the parlour some time.

Was there any sentinel upon him in the parlour?—Oh, no such thing! they had too great a regard for him to have a sentry over him.

Jury.—Could he have gone off, if he chose to escape?—He could, for there was no one to hinder him.

Court.—Did you ever know him leave the dépôt more than that once?—He did another time.

Mr. Campbell.—Where did he go to?—Into Dillon's, with a great coat upon him, disguised.

Was there any watch upon him?—There was not.

Patrick Finerty sworn.—Examined by *Mr. Mayne.*

Do you know the place called the store or depot in Mass-lane?—I do.

Were you ever in that store?—I was.

Did you ever see any carpenter's work going on there?—I did.

What kind of work was going on? was it repairing the place?—No; I saw several things.

Did you ever see pike handles made?—I did, sir.

At the dépôt?—Yes.

Were you there shortly before the 23rd of July?—I was there, in the course of the week preceding it.

Did you see any of these works going on at that time?—I did.

Look at the prisoner?—I see him.

Do you know him?—I do.

Did you see him before?—I did.

When?—I saw him in many places in Dublin, and in the dépôt twice.

Did you know him before?—I did.

What trade is he of?—A carpenter; that was what led me to know him.

You are also a carpenter?—Yes.

The twice you saw him there, was it near the 23rd?—Some time in the week before.

Did you see him do any thing?—No; only standing in the place.

Were you there constantly?—No.

About what time did you leave the dépôt last?—About six in the evening.

Of what day?—Saturday.

The 23rd?—Yes.

Were there many in the dépôt that day?—There were.

In different parts of the store?—Yes.

Perhaps you did not see them at all?—No, sir.

Was Mac Intosh there as one belonging to the place, or as a prisoner?—He did not seem to be a prisoner.

Do you recollect where you saw him on Saturday the 23rd?—No.

Patrick Finerty cross-examined by Mr. Mac Nally.

You say, he did not seem to be a prisoner?—No.

You were not a prisoner yourself?—No.

He might be there against his will without your knowledge?—He might.

Patrick Farrell sworn.—Examined by *Mr. Townsend.*

Do you remember the insurrection of the 23rd of July?—I do, sir.

Do you remember the dépôt in Mass-lane?—I do.

Were you ever there?—I was.
When were you there first?—On Friday night.

Before the insurrection?—Yes.

At what hour?—Between nine and ten, as near as I can guess.

How came you to be there?—I was passing by between nine and ten, and I stopped there, hearing some noise in the place; it having been a waste place, I stopped to listen a couple of minutes, and a door opened, and a man caught me by the breast, and pulled me in and asked me, what I was doing there.

How long did they keep you?—Until the next night.

At what time?—Between nine and ten, as I can guess.

How did you get out?—When the door was opened to let out a broad piece of timber, I got out.

Look at the prisoner; do you see him?—I do.

Did you see him there?—I did.

Did you see him do any thing there?—He was working at the large beams of timber.

What was he doing to them?—He was loading them along with the others.

What do you mean by loading them?—Putting in gunpowder, and other things.

Was that in the evening?—It was in the early part of the day from twelve till evening.

Did he seem very busy at the time?—He was very busy along with the rest.

How was he dressed?—In his shirt and waistcoat with sleeves.

He had no coat?—He might; but at the time I saw him he had not.

Did he work hard?—He was working hard.

Patrick Farrell cross-examined by
Mr. Mac Nally.

Of what business are you?—A steward.

To whom?—To Mr. Ormsby in Thomas-street.

What work did you do?—Whatever they made me.

If you were a carpenter, you would have worked at the beams?—I would.

And, as an honest man, you would have worked at the beams?—I would; it was against my will.

You were forced to handle gunpowder?—They made me put the fuzes into the small hand grenades.

You were forced to do it?—I was there and they bade me; so I did it.

If you refused, you would be put to death?—It so appeared at the first commencement.

Do you not believe, that carpenters were necessary men to carry on the works in the dépôt, to make those machines and beams?—Certainly they were.

Why then carpenters would be an acquisition, if they could get hold of them?—I do not know.

You saw this man working as a carpenter?—No.

Did you not say he was a carpenter?—No.

You said he was working at the beams?—He was loading them.

Would he not have been killed, if he was fused?—I cannot say.

How many days did you stay there?—Twenty-four hours.

How did you get out?—When one of the beams was going out.

Did you go with the party?—No, I did not.

If a blunderbuss was put into your hands by them, would you not take it?—I would not, but I would not go with them, I would not.

How many were in the place?—I cannot tell, because I did not reckon them; there were so many coming in and out, and about the place.

Court.—What did you do when you escaped?—I got into a waste place and remained there all night; and the next day I told my master what had happened to me.

Abraham Coates, esq. sworn.—Examined by
Mr. Attorney General.

Where do you reside?—In the town of Arklow.

You are a magistrate of the county of Wicklow?—I am.

Look at the prisoner, and say whether you ever saw him before?—I recollect perfectly well to have seen him before.

Mention the circumstance that led to your seeing him?—After the insurrection in Dublin, I had a suspicion that persons concerned in it would escape through the country, and was particularly watchful, and I saw a man passing through the town of Arklow; I ran quickly after him, and I beckoned to one or two other persons to follow me; I stopped him, and brought him into a guard house.

Court.—Did he run?—No, my lord, he walked smartly.

Mr. Attorney General.—What passed?—On enquiring what his name was, he told me "James Magrath;" either James or John. I am not quite certain; but I am perfectly sure he said "Magrath."

What farther passed between you?—There was another person with him who called himself William Bryan; they appeared very suspicious persons.

What farther account did the prisoner give of himself?—Afterwards, in a private examination (I examined them separately), the prisoner told me he was a mill-wright, and was on his way to Waterford; I asked him how he been in Dublin; he told me he was out of Dublin for three weeks previous to the 25th. He also told me, he had been working at Mr. Jones's of Killineycarrig, in the county of Wicklow, as a mill-wright.

Do you recollect how soon after the 25th July this passed?—I believe it was on the 26th, but it was soon after.

You are sure it was within the week?—I am; I would recollect the circumstances better.

r, but I put them on paper, and transmitted to Dublin.

Extracts from the Proclamation were read, as before.—*Vide* Kearney's case, p. 723.]

[Case closed on behalf of the Crown.]

DEFENCE.

Mr. Mac Nally.—My Lords and Gentlemen the Jury; I am counsel, with my friend, Mr. Campbell, in this case, for the prisoner at the bar; and it is my duty to state to you, Gentlemen, from the instructions which I have received, the nature of the defence which he calls upon me to impress upon your minds, for the purpose of his acquittal. In discharging that duty, I should think myself acting with disrespect to the Court; with a violation of that confidence which I have, Gentlemen, in your good understandings and your hearts, should I attempt to offer anything to you, that would look like an intention to impose upon you.

Gentlemen, however desperate the case of my client may have appeared to you, from the statement upon the part of the Crown, and the evidence already produced, I am entitled to tell you this, that he has a right to our presumption of his innocence, until you hear the case closed. I make that observation, because the attorney-general stated to you, that it was your duty to attend to the evidence upon the part of the Crown, to establish the guilt of the prisoner upon that evidence. I deny the position. It is contrary to the tendency of an acknowledged legal rule, namely, that the presumption of innocence in favour of the prisoner is his right until the case be closed. And I say it is your duty, not to attend to the evidence for the Crown in any case partially and abstractedly, but to the evidence upon the whole of the case; and if there be an inclination to one side or the other, that inclination whether from presumption or inference, ought to be in favour of the prisoner. Grand juries, indeed, are only to hear, and of course only to attend to *ex parte* evidence; but petty juries are to compare, to weigh, and to decide upon the examination of the facts and the credit of the witnesses on both sides. They are to do this, because it is so strong an established principle of the law of this country, that justice should be administered in mercy, that the king, when he is called to the throne, takes an oath in which he recognizes that principle, binding himself and all those acting under him, to a merciful administration of the penal laws. I do know, because I feel how difficult it is for human nature to divest itself of prejudice. I have felt prejudice during these trials, burning my heart with sorrow, because I heard evidence given by wretches upon the table, of the murder of a nobleman, whose character I shall not attempt to define. We must all remember it, but no man will be able to draw it with the pencil of justice. He

deserves more than any man can express; and I trust he is now enjoying that happiness to which good men are entitled. He forgave his murderers, and in his dying moments bequeathed them a trial according to law. But now removed from this earthly coil, divested of human feelings, his spirit perhaps looks down, even on this court, and viewing that man who appeared as a witness on the table, accuses him of the foul deed of murder, and in the language of the scripture, cries out, "O earth, cover not thou my blood!"

Gentlemen, this reflection draws our attention to the two material witnesses who have appeared upon the table: I will say a little as to the facts which they have sworn. I admit many of the facts to be true, because they must damn the credit of their testimony. I impeach these witnesses as men who ought not to have credit, whose testimony you should expunge from your memory, and dismiss them marked as persons not deserving your attention. How do they appear?—no wonder they spoke with palsied tongues and quivering lips—plunged in blood, and in iniquity as they are, their oaths ought to have no effect.

If you throw their testimony out of the case, see how it stands. It is admitted, that there were persons forced into that laboratory, or dépôt. It is admitted by an unimpeachable witness, that if a man did not work according to the direction of the officers in that magazine, death would have been the consequence. It appears, that the prisoner was there, and that must be admitted; but the defence is this, and the inference lies with you: Was he there by compulsion, or not?—The law says, that threats, or compulsion alone will not be a justification for a man's acting with rebels; he must be in danger of life or limb; and he must show that he took the first opportunity to escape; this is the strict letter of the case. You see what the situation of Farrell was; he worked in the dépôt against his will, under the impression of such fear, as he swears, that he was first brought in under dread of death, and that impression continued upon his mind during the whole time he was there. Gentlemen, so it might have been with the prisoner.

Gentlemen, there are two points only in this case worthy of your consideration: First, the prisoner was proprietor of the house in Patrick-street, where an explosion took place. That fact, if it stood by itself, could not affect him, unless it were an overt act in the indictment, and it must appear, that he kept the house for a treasonable purpose. It appears that there was an explosion; that the windows were burst out; some scraps of linen were found in the yard, and some fragments were found in the house: but the witness has not shown that the explosion was by gunpowder, or that the matter he found was a composition of gunpowder; nay, so far from its being powder, he says, he found it in

jumps. It requires little knowledge of chemistry to know this, that explosion may proceed from many other materials besides gunpowder. Dr. Hutchinson, when lecturer in chemistry in Trinity college, in trying an experiment upon the transmutation of colours, brought the whole laboratory about the heads of the students, by accidentally touching with a hot iron some material that lay on a table. The several circumstances which have here been given in evidence, are in favour of the prisoner, because you have heard what his declaration was. He said there was a preparation making for dyers. Suppose then that he became an object to the persons, who had possession of the dépôt at the rear of Thomas-street. They heard of the explosion as all the town did; they got hold of the prisoner as an useful man, and they kept him to work, as they did others, under terror of his losing his life; he worked for them by compulsion: there is evidence that he worked, but there is no evidence of a reasonable intent.

But the magistrate, who arrested him, said he had guilt in his countenance. What an excellent physiognomist is his worship—a disciple of Lavater's no doubt—and he studies his own countenance I presume daily in a mirror to avoid appearing with a convicting countenance. His rule of evidence is something like that laid down by Little John in the opera of Robin Hood: "I have four reasons for hanging you," says Little John to the Friar, "and one is, you have a damned hanging look." I believe, gentlemen, you will not pay much attention to such evidence; to convict men by their looks would be concluding upon a species of *prima facie* evidence that might endanger even the worshipful magistrate who tendered it, as well as many other very honest and simple men.

Gentlemen, I will call witnesses to show the general character of the man. It is impossible to call any witness out of the dépôt; every man who was there considers himself as having a halter about his neck, and if he came without an insurance of his life, from those who have authority to screen guilt, he would be attacked by Fleming and the other witness, who, as I said, have admitted themselves guilty of murder.

Mr. Attorney General.—I did not wish to interrupt Mr. Mac Nally in his statement, but I am obliged to do so, as to a matter of fact. The witness did not state himself to be a murderer.

Mr. Mac Nally.—I thank the Attorney General for the interruption, because I shall show he was a murderer; he was present, aiding and abetting in the perpetration of a murder, and he has confessed it in open court; and it is my opinion, as a lawyer, that every man so present, aiding and abetting, given by a shout to encourage, if there were ten thousand, is guilty of murder—the blow of one is the blow of all.

Mr. Attorney General.—State it so, and I will not interrupt you.

Mr. Mac Nally.—So I do, and I call a murderer on his own confession. Gentlemen, I will not detain you or the Court longer at this point. I will call witnesses to charge. I will not dilate upon the doctrine of duress, which has been repeatedly held out to the juries of Dublin, who are now become accurate judges of the evidence in cases of treason, as the bar; and therefore, under the direction of the Court, I will only say, for you doubt, you ought to acquit. You will enter into your consideration, whether you will not to expunge the evidence of the two accomplices. If you do, you must acquit; if you should not, their evidence cannot be free from doubt, and therefore you must acquit that case also acquit.

James Hunter sworn.—Examined by **Lt. Campbell.**

Do you know the prisoner?—I do, for six years.

What has been his general character at that time?—I considered him a hard-working, industrious man.

What has been his character as to peaceableness of disposition?—During the time he worked for me, I found him a quiet and a nest man.

You are a yeoman?—I am sergeant-major in the Liberty Rangers.

James Hunter cross-examined by Mr. Attorney General.

Have you any other connection with a prisoner than working as a carpenter for me?—No more.

How long did he work with you?—Different times, at jobs.

And you paid him for his labour?—Yes. Do you not believe that many decent hard-working people were in the business of the rebellion?—I cannot say; I was with a regiment that night.

Many carpenters worked hard that night?—I heard so.

And you believe it?—Yes.

William Hunter sworn.—Examined by **Lt. Mac Nally.**

You are a lieutenant in the Liberty Rangers?—Yes.

Do you know the prisoner?—Yes.

How long?—Five or six years.

What was his character as to loyalty and the present charge?—I do not know what that.

Did you hear it impeached?—No.

He was a quiet and honest man?—Yes.

William Hunter cross-examined by Mr. Mayne.

You know nothing of his loyalty?—Nor have I employed him since December. He worked hard?—Yes.

Did you know him by the name of McGrath?—No; they generally called him Mac. He told me he was a Scotsman.

Thomas Martin sworn.—Examined by Mr. Campbell.

Do you know the prisoner?—I do, these four years.

What has been his general conduct with regard to peaceableness of demeanor and honesty?—He was a peaceable, honest man; he worked for me as a carpenter, and I paid him.

Thomas Martin cross-examined by Mr. Townsend.

Were do you live?—In Patrick-street.

How far from the prisoner's house?—A good way; the corner of Bull-alley.

You know nothing of the prisoner but his working for you?—No.

Michael Smith sworn.—Examined by Mr. Mac Nally.

Do you know the prisoner?—I do, these two years.

What has been his general character during that time, taking in his loyalty, his disposition, and every quality?—His general character was that of an honest man.

Did you ever hear it impeached for disloyalty?—No.

Michael Smith cross-examined by Mr. Attorney General.

Did you employ him as a carpenter?—Yes.

And he employed you as a spirit seller?—No, only when business led him there.

You never heard his character as to loyalty spoken of?—No.

You know nothing of him, but his doing business for you?—No.

Willoughby Fyfe sworn.—Examined by Mr. Campbell.

You are a yeoman?—Yes.

Do you know the prisoner?—Yes, eight years.

During that time, what was his general character and conduct as to peaceable demeanor and honesty?—He was an honest faithful man, peaceable and industrious; I never heard any thing against him till the present charge; he wrought for me some time, but not latterly, these two years.

Had you frequent opportunities of knowing him?—No.

Willoughby Fyfe cross-examined by Mr. Attorney General.

You knew nothing of him these last two years?—No.

When did he come to this country?—He came here, employed by Mr. Stephens, who built Sarah Bridge, and he lived with Mr. Stephens at Island Bridge, and while he was there he worked as a diligent man. When the bridge was done, many of the men went away. This man staid a working carpenter,

and I employed him occasionally to make packing boxes till 1801, when we had a dispute about a box, and I did not employ him since.

A Juror.—Had you an opportunity of knowing his character of late?—No.

[Case closed on behalf of the prisoner.]

The evidence was not observed upon by counsel on either side.

SUMMING UP.

Mr. Baron *Daly* proceeded to sum up the evidence to the jury. He stated the indictment against the prisoner, and the overt acts which were contained in it. With regard to the insurrection, the learned judge said, it would not be necessary to detail any part of the evidence, because that fact was not disputed by any thing which was offered on the behalf of the prisoner, and therefore the jury might fairly take that for granted. But with regard to the evidence which applied to the prisoner, it was necessary to detail it, as requiring the particular attention of the jury.

The learned judge then read the evidence from his notes, and made occasional remarks. He said, the cross-examination of Fleming went to impeach his veracity, and certainly the acknowledgment of the man himself strongly impeached him. But there was one fact stated by him, which did not require corroboration, that was, that the prisoner was in the dépôt; for by his defence, he admitted he was there; and therefore let Fleming be the greatest villain upon earth, that fact told by him is not disputed. The witness, Finerty, was subject to the same objections as Fleming, but Farrell was an unimpeached witness, giving information immediately after his escape from the place. The conduct of the prisoner was different and was extraordinary, if his defence of being under compulsion was true; for instead of giving information, or making his escape, when he had got out of the place, he goes off to Arklow, and denies his name, when interrogated by the magistrate. That was not the natural part he would have taken, if he had been under compulsion.

The only evidence offered by the prisoner was evidence of character, showing that he was an honest hard-working man; but no witness was produced with regard to his loyalty, and all that was said respecting it was, that the witnesses never heard his loyalty impeached. There was no doubt but many honest and industry men have been seduced into rebellion; at the same time, it was less likely, that a quiet and peaceable man should be so seduced, than a man of idle and dishonest habits.

But evidence of character ought not to have weight with the jury, except they had a reasonable doubt upon the evidence for the Crown. In such a case it ought to have great weight, and if the jury had any doubt, even

evidence of an honest character, though not strictly to the point in issue, ought to have its weight. But if there was no doubt, it could have no weight. The jury would consider the whole of the evidence, and give such verdict as was consistent with their judgment of it.

The Jury, without retiring, pronounced a verdict of—Guilty.

Mr. *Attorney General* prayed judgment against the prisoner.

He was accordingly called up, and his indictment was read, and he was asked in the usual way what he had to say, why judgment of death should not be pronounced?

He made no answer.

Mr. *Baron Daly* addressed the prisoner, who was convicted upon the clearest evidence of the crime of high treason. Indeed his own demeanor at his trial, and the line of defence which he authorized his counsel to go into, cleared up all doubt if there had been any; his defence was founded upon the plea of force, which his whole conduct falsified. A man forced into a business of that kind, would never have fled, after the force was removed; he would not assume a fictitious name—he would never have told a series of untruths, as the prisoner did upon his arrest. It was obvious to every person that the prisoner was one of those, who were in the greatest confidence with the conspirators. He was employed to take a house for the purpose of carrying on a manufacture of gunpowder. It would appear, from a book found in his house, that he entered into this business from specula-

tive notions; it appeared that he was a literate man, and the reading he chose to resort to was of that species which would corrupt a man who yielded to it; but was most peculiarly fitted to corrupt men of inferior understandings, who had just knowledge enough to imbibed false principles, but not sufficient firmness of intellect to guard against them. The prisoner chose to read "*Volney's Ruin of Empires*." It was a heavy misfortune, in his reading was not otherwise directed. If he had read his Bible, it would have guarded against the crime for which he was to suffer. The learned judge expressed his most anxious hope, that the line of reading, into which the prisoner had fallen, had not entirely engaged him; but that some vestige of reason remained. It behoved him to resort to it; it behoved him to apply to that God, whose law he had so grievously offended, and to make use of the short time left to him, in order to make his peace. He could not do so more effectually, than by disclosing to his country the schemes he had entered into. From what appeared, he must be an adept in them, as he could not make a more acceptable amendment to his Creator than by disclosing all he knew. Nothing remained for the Court but to pronounce the sentence of the law.

The sentence was pronounced in the usual form.

The prisoner was executed the following day in Patrick-street.

667. Trial of THOMAS KEENAN for High Treason; before the Court holden under a Special Commission at Dublin, on Monday October the 3rd: 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.

Monday, 3rd October, 1803.

Judges present—Lord *Norbury*, Mr. *Baron George*, and Mr. *Baron Daly*.

Thomas Keenan, having had counsel and agent assigned upon a former day, was now put to the bar, and arraigned upon the following indictment:—

County of Dublin } THE jurors for our lord
to wit. } the king upon their
oath present that *Thomas Keenan* late of Thomas-street in the city and county of the city of Dublin a subject of our said lord the now king not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instiga-

tion of the devil as a false traitor against our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and faithful subject of our said lord the king owes him our said lord the king should bear witness withdrawing and contriving and intending the peace and common tranquillity of the kingdom to disquiet molest and disturb the government and constitution of this realm to change subvert and alter and our said lord the king from the royal state title bear power imperial crown and government of this realm to depose and deprive and our said lord the present king to death and final destruction to bring and put he the said *Thomas Keenan* on the twenty-third day of July in the forty-third year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend the

* From the Report of William Ridgeway, esq. barrister at law.

said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death and that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations and compassings aforesaid he the said Thomas Keenan as such false traitor as aforesaid on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did conspire confederate and agree to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this kingdom

And afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid he the said Thomas Keenan as aforesaid in further prosecution of his treason and treasonable purposes aforesaid falsely wickedly and traitorously did arm himself with and did bear and carry a certain weapon called a pike with intent to associate himself with divers other false traitors armed with guns swords and pikes whose names are to the said jurors unknown for the purpose of raising levying and making insurrection rebellion and war against our said lord the king and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king within this kingdom

And that afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid the said Thomas Keenan as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the said jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered together against our said lord the king falsely and wickedly did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said Thomas Keenan against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

And the jurors of our said lord the king upon their oath do further present that the said Thomas Keenan being a subject of our said lord

the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said sovereign lord the king and wickedly devising and intending the peace and public tranquillity of this kingdom to molest and disturb on the twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Thomas-street aforesaid in the city and county of the city of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom and in order to fulfil and bring to effect the said traitorous compassing imaginations and intentions last-mentioned of him the said Thomas Keenan he the said Thomas Keenan afterwards to wit on the said twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at Thomas-street in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king his supreme and undoubted lord contrary to the duty of the allegiance of him the said Thomas Keenan against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

The prisoner pleaded Not Guilty; and being asked, whether he was ready for trial, answered in the affirmative.

The following jury was sworn, after twelve had been set by on behalf of the Crown, one challenged by the prisoner, for want of freehold, and thirteen challenged peremptorily by him :

Thomas Williams,	Christopher Humphries,
James Donavan,	William Jones,
Stephen Parker,	John Mason,
James West,	Robert Beere,
Jacob West,	George Paine,
Charles A. Kelly,	Martin Keene.

The prisoner was given in charge.

The counsel and agents for the Crown were the same as on the preceding trial.

Counsel for the Prisoner.

Mr. Bushe.
Mr. Magrath.

Agent, Mr. L. Mac Nally.

Mr. Townsend opened the indictment :

Mr. Attorney General ;

My Lords and Gentlemen of the Jury.-- Upon the present occasion we shall have to trouble you with a very short case. You have heard the prisoner charged with high treason ; and, gentlemen, it will be your duty to find him guilty of that crime under the indictment which we have preferred against him, if it shall be satisfactorily to your minds, upon the evidence which will be produced, proved, that he embarked in a conspiracy to collect arms and ammunition, in order to change the laws and constitution of this country by force. It will also be your duty, gentlemen, to find him guilty, if it shall appear to you, that he afterwards made use of arms for the purpose of levying war against the king. But if either the one case or the other shall be substantiated, his guilt will be complete ; because in the eye of the law, a conspiracy for this atrocious purpose, manifested by the preparation of arms to be used in the promotion of the design, is a distinct and substantive overt act of the treason ; and it must appear still more plain to the capacity of every man, that if the conspirator goes farther, and actually uses the arms for the atrocious purpose with which they were prepared, he is guilty of the crime which we have imputed to the prisoner.

Gentlemen, I think we shall be able to satisfy your minds, that in consequence of the explosion which took place in Patrick-street, in the house of Mac Intosh, upon the 16th of July (exactly one week previous to the insurrection) by which that establishment was broken up, the proprietor of this house, together with those persons who had theretofore worked with him, repaired to that neighbouring depôt in Mass-lane in which the same preparations were going forward.

Accordingly, about this time, the evidence will satisfy you, that the prisoner, in company with Mac Intosh the proprietor of the house in Patrick-street, repaired to that depôt in Mass-lane, and there carried on the same species of work, which they had been accustomed to exercise in their former habitation. —The prisoner was active in the preparation of handles for pikes ; being himself a carpenter, he was particularly conversant in that sort of work. It will appear also, that he was employed with Mac Intosh, in filling beams and other implements for the purpose of explosion. —These are overt acts of the first species of treason, going to demonstrate that the prisoner embarked in a conspiracy to alter our laws and constitution by force. It will remain to be proved, that he acted upon that design, and took such part upon the evening of the 23rd of July, as his previous conduct would induce you to suspect.

Accordingly we follow him into Thomas-street, on that lamentable night, and find him active in assisting the insurgents, and taking

part in those inhuman murders, which mark the commencement of this sanguinary rebellion. —Shortly after these atrocities, he is with some of his companions to the corner, Meath-street, to consult upon their future operations. The generals, who marched in the vain expectation of heading an army finding that the horrid miscreants under their command, could not undertake any enterprise greater than individual murder, fled in disorder to the neighbouring mountains ; a few of that party, unappalled by the crimes which had been committed, looked about for their officer and desired to be led on ; the prisoner, who of that party, lamented the absence of the commander, talked of some of the barbarous transactions which had just taken place, spoke of them as necessary for the accomplishment of their object. When we produce this evidence, if it shall appear to you to deserve credit, you will cheerfully give that verdict which the circumstances of the case loudly demand. At the same time the consciousness of the crime ought not to be brought into consideration against the prisoner, who you are making up your minds upon the case, which may be due to the witnesses ; on the contrary, I feel my own indignation so aroused by the peculiar enormity of the crime, that I cannot but recommend you to pass before you finally determine ; you will then strip the accusation of all its horrors, and consider only the evidence which will be produced to substantiate the charge : the witnesses to be brought before you undoubtedly were accomplices in the crime, and here give us leave to say, that I am aware that those who confess themselves guilty of embarking in such transactions, detract from the credit which you would give to unimpeached men. But notwithstanding this observation, if such witness connected with circumstances tending to show the probability of his secret and its consistency with truth, is sufficient for conviction ; and if in addition to one witness of that description, and the probability of the case, a second comes forward substantially to corroborate the former ; and if their stories are consistent one with another, in all points natural and probable, the result must be a conviction on your understandings, that the testimony is true.

Gentlemen, I know, that persons in the situation of informers, more especially where there is no other way of getting rid of the evidence, naturally call for warm and strong observations from the counsel concerned in the prisoner, whose duty it is to defend to the utmost of their power. So far as these observations tend to show that such witnesses do not deserve as much credit as others, and the propriety of supporting their testimony by corroborative circumstances, I readily acquiesce in them. But when the counsel descend to idle declamation and irrelevant abuse when they call upon you to consider such witnesses as the most atrocious wretches, and

when you are desired to discharge from your minds every thing which they uttered, it is going somewhat too far; the argument loses all its weight; and instead of assisting the vindication of innocence, it tends to the perversion and suppression of truth. So far as it endeavours to depreciate their credit it is just, but if it goes farther, and alleges that the witnesses are not in any respect to be attended to, it is wild and unimpressive. Where shall we look for witnesses to discover the dark and hideous transactions of conspirators, who consult secretly amongst themselves, maturing their designs in all the obscurity of concealment? It is almost impossible there can be any evidence but that of a person who has participated in the conspiracy, and although the preservation of his own life should be the motive of his coming forward to assist in the execution of public justice, that is no objection to the admissibility of his evidence; it is never too late for a man to do a meritorious action, to abandon his habits of guilt, and to adopt that line of conduct which not only contributes to his own safety, but is essential to the interests and tranquillity of his country. Such a man therefore redeems himself, as far as he can be redeemed, from the imputation which the crime attaches upon him, by honestly coming forward at any time to confess his errors, and boldly in a court of justice assisting to fasten those crimes upon others, in which unfortunately for himself he may have been for a moment induced to participate. I do not hesitate to declare, that I have more satisfaction on behalf of the public in prosecuting upon the evidence of a fellow-conspirator, than upon the testimony of a person altogether innocent of the crime; and why? Because the object of public justice is not so much the punishment of a guilty individual, as the example which is held out to the community; and obtaining unimpeached evidence of a dark and secret conspiracy is an accidental and fortuitous circumstance, not impressing upon the minds of those who may be solicited to embark in similar pursuits, any apprehension of detection, and therefore such prosecutions are not calculated to deter men from engaging in such designs. It is so seldom that persons of unblemished character can be produced to give evidence of dark and treasonable conspiracies, that the few instances which occur are rather considered as casualties too remote to be apprehended, than as consequences which should reasonably be expected to follow. And permit me, gentlemen, to ask you how long could the safety of the city be maintained, or the government upheld, if we were to look to the honest trader, and the opulent merchant for intelligence of what passed in the celebrated *dépôt* in Patrick-street or Mass-lane? Your own understanding will show you, that it is impossible that the sober trader or industrious mechanic could fall into such company; to whom then are we to look but to those whose situa-

tions render them subservient to the delusive schemes of wicked and ambitious men, and who easily yielding to the temptations that were held out to them, are equally ready, upon a reverse of fortune, to point out those by whose artifices they have been deceived, and by whose wild and mischievous speculations they have been misled and inveigled?

Such men at length, though late, come forward to do justice to their country and themselves, and this, gentlemen, is your best safeguard against conspiracy. When those who conspire against their country assemble in their retirement, hid from the observation of honest men, and begin to debate plans of treason amongst themselves, each man looks into the countenance of his neighbour, and his heart becomes appalled when he recollects how many former conspirators have fallen by the disclosure of those in whom they have implicitly confided. This reflection disheartens the conspirator, and rebellion relinquishes the prosecution of her design. When, therefore, I am enabled to produce here a credible and consistent tale, told by men who have been seduced themselves to embark in traitorous designs, when they are supported by concurring circumstances and uncontroverted by respectable evidence, they are fully entitled to that credit from a jury, which is allowed to them by the law. And I feel that essential service is rendered to the country, when I am able to hold out to those who conspire against its peace, that they cannot securely repose confidence in each other;—that no confidence can exist amongst traitors;—that they never can foresee at what moment one of their party may feel compunction for his guilt, and make atonement for his crimes, by becoming the instrument of inflicting punishment upon the guilt of others.

Gentlemen, I am ashamed at having trespassed so long upon your indulgence; but I thought it my duty to say so much, finding that attempts have been made to destroy the evidence of informers; but when that evidence is such as to obtain credit from a jury, it is the greatest death blow which conspiracy can receive;—it establishes a truth which cannot be too universally known,—that those who are false to their king cannot be true to each other.

Edward Wilson, esq. sworn.—Examined by Mr. Mayne.

[The witness gave the same account of the transactions in Thomas-street, as in Kearney's case (*vide* p. 711); and stated the circumstances respecting the *dépôt* in Patrick-street, as in Mac Intosh's case.]

[He was not cross-examined.]

Felix Brady, esq. sworn and examined.

[This witness gave the same account as upon the trial of Kearney.—*Vide* p. 714.]

[Not cross-examined.]

Wheeler Coulman, esq. sworn, and examined.

[This witness gave the same account as before.—*Vide* Kearney's case, p. 719.]

Serjeant *Thomas Rice*, sworn and examined.

[This witness proved the proclamation as before.—*Vide* Kearney's case, p. 722.]

John Fleming sworn.—Examined by Mr. *Townsend*.

Where did you live in the month of July last?—At Dillon's, the White Bull, in Thomas-street.

What house is that?—A carman's stage.

Do you know Marshal lane?—I do.

Did it communicate with Dillon's yard?—Yes, the yard opened into the lane.

Do you know the malt stores there?—Yes.

How near were they to Dillon's?—Next adjoining.

Were you ever in those stores?—Yes.

In what situation were you at Dillon's?—Hostler.

Then you were often in the yard and stables?

—Yes.

If any thing difficult was going on in the store, it could not be concealed from you?—Not well.

Was it three months before the 23rd of July you got into the store?—Yes.

Were you in it after?—Oftener than I can mention.

What did you see there?—Pike handles, guns, blunderbusses, and pistols and swords.

Did you see any gunpowder?—I did, sir.

Did you see any cartridges?—I did; and a mill for grinding powder fine.

Did you see any tailors there?—I did.

Any jackets?—I did; green, with white facings.

Did you see any handsome uniforms?—I did.

What kind?—Just like an officer's coat, with epaulettes and gold lace.

Did you see many persons there?—I did, very often.

What were they doing?—They were employed at different works.

Where were the pike handles made?—On the first loft of the store.

Did you see the people working at them?—I did.

And at various other works?—Yes.

Look at the prisoner at the bar; did you ever see him there?—I did.

Did you ever see him employed there at any work?—I saw him planing these handles.

When did he come there first?—I cannot well tell.

Mr. *Bushe*.—It is not laid as an overt-act in the indictment, that the prisoner was in the depôt, or did any thing there.

Mr. *Townsend*.—There is an overt-act of a conspiracy to levy war.

Mr. *Bushe*.—But I understood, that in the

former cases, it was laid as an overt-act, that the party was in the depôt.

Court.—No; it was laid, that he procured arms and ammunition.

Mr. *Townsend*.—The rule of law is, that what makes a man accessory in felony, &c. make him a principal in treason; and when war is actually levied, all preparations for it will be evidence to support an overt-act of conspiracy to levy war. When did the prisoner come to the stores?—In the last week before the 23rd of July.

With whom did he come?—I cannot tell.

Do you know for what purpose these arms were collected?—I was told for rebellion.

Were you told that in the depôt?—I was.

Who came with Keenan?—Four or five came at night; two, I heard, were deserters.

Do you know the names of any of them?—Mac Intosh was one.

Do you remember any other name?—There were others; but I do not recollect the names.

Do you recollect what night they came?—I do not.

Do you recollect any particular event opening?—No.

Is Mac Intosh any relation of the prisoner?—I heard so, when in the Prevot.

Mr. *Bushe*.—My Lords, I object to the evidence being given against the prisoner, it is impossible that any connection in rebellion can be evidence of connection in treason.

Mr. *Townsend*.—It may be evidence to the jury under particular circumstances and was so determined in a case in Street. Did you see the prisoner doing any thing?—I saw him working at pike handles.

Did you see him often?—I did, every day in the week.

Jury.—Did you go there often?—I did three or four times a day; almost every day I was there.

Mr. *Townsend*.—What did you see the prisoner do?—Planing the handles, and serving as workmen generally are.

At what time did the insurrection begin?—After nine o'clock.

Do you recollect seeing any persons carried out of the depôt?—I do.

What number?—I cannot tell.

How many do you think?—Were there fifty?—There were more than fifty about the place.

Had they arms?—They had.

What kind?—Blunderbusses, pistols, locks, and swords, and pikes.

Where did they get these arms?—In the depôt.

Where did they proceed to?—Down Dirty-lane, where some shots were fired.

Where did they proceed to from that place?—Up to Thomas-street.

Did you see the prisoner in that party?—I saw him in Thomas-street.

Did you see him coming out?—No, I did not see him in the depôt that evening.

Was he armed when you first saw him in Thomas-street?—He was.

With what?—He had a pistol and a pike.
When you first saw him had he a pistol or a pike?—He had both together.

Do you recollect the stopping of a carriage in Thomas-street?—I do.

Did you see any thing done by the prisoner before that?—Nothing more than by any other.

What persons were in the carriage?—Two gentlemen and a lady.

What became of the lady?—She ran away.

They let her go off?—She ran away.

What became of the gentlemen?—One of them was piked, and was upon the ground; the other went off.

Were there many about the carriage?—There were a great many.

Did you see the first stopping of the carriage?—I saw it first stopped, but was not near enough to see what was done, till I got up and saw the gentleman upon the ground.

Did you see the other gentleman going away?—I saw him going towards John's-street.

Did you see any thing done to the person, who was upon the ground?—I did, I saw him stabbed with pikes.

Did you know any of those who did so?—I did.

Mention any of them?—Keenan was one.

You need not mention any other name: are you sure he did so?—He did.

Jury.—How near were you to him?—A few paces.

Mr. Townsend.—Where did you go to afterwards?—I went to Meath-row.

Did you see the prisoner there?—I did.

Did he say any thing there?—He said "if every man of his sort was used so, we need not be afraid of the army."

Were there many there?—There were a good many.

Was any thing more said?—We were asked by Mac Intosh to go up the mountains with him.

Was the prisoner there?—He was of the party.

Did Mac Intosh give any reason for going up the mountains?—Mac Intosh said "the horse would come down and cut us off; the alarm being about the city."

Were the generals there at that time?—No, they went off to some place.

Where did you go to?—We went to New-street. A blunderbuss was fired, and I made my escape some way or another.

Did you see the prisoner after that night?—I saw him in a lane from off New-street.

Did you see him again?—I saw him in the Provot.

Jury.—Was it before or after you got into New-street, you saw him in the lane?—Before.

Mr. Townsend.—What became of you?—I remained in a house in New-street till Tuesday; I went to Thomas-street, and from thence to the county of Kildare, where I was taken

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up on suspicion, and kept in a guard house in Edenderry, and sent to Dublin.

And you told all you knew?—I was some time in confinement before I told all.

John Fleming cross-examined by Mr. Bushe.

You said, there was nothing done by the crowd until you came?—I beg your pardon, I did not say that; I said, I did not see it, till I came up; I saw the gentleman upon the ground.

You prevented any thing being done to the gentleman?—No, I durst not.

But you would, only you were afraid?—I do not know whether I would or not.

You were compelled by force to be there at that time?—No, I was not; I was promised a great many good things, if matters went on.

You were present, when the gentleman was stabbed?—I was.

And you did not object, or prevent it?—I dare not.

But you would have prevented it, if you could?—I did not wish to shed innocent blood.

Did you give any information until you were taken up?—No, nor for a good while after.

Then you gave information against others, when you became afraid of yourself?—I gave information, when a man came and gave evidence against me.

Was it not from a hope of saving your own life that you gave information?—I hope so, but was not promised.

Though you were not forced yourself, do you not believe, that many were forced there?—They might, or might not; I saw none of them forced.

Do you know Mr. Mac Creight?—I heard of him.

He was forced to take a pike?—I heard of it, but I did not see him.

Do you remember the former rebellion, five or six years ago?—I do.

Were you ever accused of being connected with that?—I was accused of being sworn, but no farther.

That was an unjust charge?—I was sworn, when in liquor, and did not know whether I was sworn or not: but a man beside me said, I was, and I gave information to my officer.

What officer?—I was in the army at that time.

You had been attested, and sworn to serve the king loyally and faithfully?—Yes.

And you swore to be loyal and faithful to the United Irishmen?—I cannot say that, not knowing it.

Have you not betrayed both, and been false to both?—I cannot say that.

Which have you been true to?—I am false now to the United Irishmen.

And before you were false to your king?—I never did him harm, nor saw it done, while serving him. But we were disembodied, and I was not serving him at the time of this business.

When you were sworn an United Irishman, did you not think you did him harm?—I did not think it harm when I did not know it; and when I was told of it, I told my officer.

Was it for being guilty of no harm that you were flogged?—Not much.

How many lashes did you get?—Two hundred and fifty.

For what?—For being a mile from my quarters.

Not for taking the oath?—That did not come against me in the court-martial.

Were you accused of being present at a murder or a rape?—No.

Are you sure?—I am certain; no man can be surer than myself.

How were you armed upon the night of the 23rd?—I was armed at first with a blunderbuss, and I swapped it at the corner of Marshal-lane for a firelock.

You discharged it first?—No, I did not. I have a man to give evidence, I did not discharge it.

When you were in the dépôt, was any man brought in there against his will?—I cannot say it of my own knowledge.

Was any man brought in there and confined against his will?—I only heard of one man.

You stood sentry over him?—No, I did not; I had too much business to take care of.

How long after the 23rd were you taken up?—Twelve or fourteen days.

In that time, did you ever go to any loyal man and tell him, you repented of what had been done?—I never did.

Then you did not repent until you were taken up?—No, nor for a long time after.

Do you not think, that if some person had not come forward against yourself, you never would have repented?—I might, or might not; I cannot say.

You do not seem much to repent now?—I do.

But you would not repent, if you were not yourself charged?—I might repent, but would not divulge it.

But you would not repent till sickness or some such thing induced you?—I have repented of my folly and wickedness, though I did not give information. I did not wish my name to be blasted. There were many could give as much information as I, and I did not wish to be first.

How many persons have you given information against, since you began?—I cannot well tell; I gave information as they occurred to my mind.

You did not remember them all at once?—No.

Your memory was refreshed? It happened a great while ago?—Not a great while; but a person troubled in mind, cannot recollect every thing at once.

You knew of this business three months before it broke out?—I believe I did.

In these three months, did you ever tell any

person of it?—Not to injure it. I would not tell it to any man, who would tell it.

Were you accused of being in any of the battles of the last rebellion?—No, never.

You were not in any battle?—Not in regard of a rebel; I was upon an expedition with the regiment.

Then it was after the rebellion you were sworn to be a rebel?—No, it was before.

Why, did you not leave the regiment after being sworn?—No.

What! after being flogged, you remained with the regiment?—Yes; it was not for that I was tried.

Was not the charge against you, that you were absent from your quarters with the king's enemies?—I cannot say that, as could any one.

Where was it?—At Nobber, in the county of Meath.

You were a mile from your quarters?—I cannot say, not knowing the country.

Who were with you?—The clerk of the church and his brother.

And the officer charged you unjustly?—The officer was a wild sort of a man.

And you were punished unjustly?—I was punished innocently.

And the officers of the court were also men?—No; but his expressions, I suppose got it for me.

Patrick Finerty sworn.—Examined by Mr. Attorney General.

What trade do you belong to?—The cooper.

Do you recollect being employed in any particular manner previous to the 23rd of July?—I was.

Where was it, and what were you doing?—It was in the place commonly called the dépôt.

In what street is it situated?—In Marshal-lane.

Do you mean a lane running from the Marshalsea to Dirty-lane?—Yes.

What did you see there?—I saw several things.

Mention some of them?—I saw tools which they termed pike handles.

Did you see any people work at them?—I did.

Did you see Fleming there?—I did. Look at the prisoner?—I see him.

What is his name?—Keenan.

Did you see him there?—I did.

Pray, what length of time did you see him there?—A short space of time; I visited the place but seldom; the last week I saw him there twice.

Did you see him at any particular work?—No, sir.

Did you know him before?—Yes, as had a slight knowledge of him.

Of what trade is he?—A carpenter, I believe.

Patrick Finerty cross-examined by
Mr. Magrath.

How long were you acquainted with this depôt?—From about the middle of May to the 23rd.

Were you there frequently during that time?—Yes, sir.

How often in the course of a week?—Three or four days in the course of a week, I worked there.

What was the first time you saw the prisoner there?—In the course of the week preceding the 23rd.

You say, you did not see him at work?—I did not.

Were you acquainted with all the persons in the depôt?—No, sir.

Did you know all their faces?—Some I might, and some not.

Did you ever observe, or hear that any man was forced in there?—I did.

Did you ever see any man there that was forced?—I saw Farrell, who, I understood, was forced.

Did you see him at work?—No, not in the interval I was there; I did not see him at work.

Neither did you see the prisoner at work?—No, sir.

Mr. Attorney General.—I thought it material to state the conduct of the prisoner at the time of his arrest, but the witness not attending at the commencement of the trial, I was unwilling to make any impression by statement, which might not be afterwards supported by evidence; therefore, I declined stating it to the jury. The witness now attends, and we will prove the conduct of the prisoner at the time of his arrest.

Abraham Coates, esq. sworn.—Examined by
Mr. Attorney General.

You are a magistrate?—I am.

Where do you reside?—In the town of Arklow, in the county of Wicklow.

Look at the prisoner at the bar; did you ever see him before?—I did; I saw him before, and recollect him perfectly well.

In what company did you see him?—Together with Mac Intosh.

Where?—In the town of Arklow.

How long might that be after the insurrection of the 23rd of July?—I believe it was on the 26th of July.

But you are certain it was thereabouts?—It must have been; it was within the week after the insurrection.

Were they in company with each other when you arrested them?—They were.

Did you ask them respectively their names? and what answers did they make?—Not immediately; I brought them to the guard-house, and there asked them.

What answers did they make?—The prisoner said his name was William Bryan.

Was he transmitted under that name from Arklow to Dublin?—Yes.

What name did Mac Intosh give?—Either John or James Magrath: I believe it was John, but I am positive as to Magrath.

Did the prisoner give any farther account of himself? What trade was he of?—He did; he told me he was a millwright, and was on his way to Waterford.

Did they both give the same account as to that?—They did.

Did you interrogate them, as to their being in Dublin upon the 23rd?—I did; they told me, they had not been in Dublin for three weeks before the rebellion.

Which of them said so?—I am not positive; they were both in the guard-house; but the prisoner said, "he was not in Dublin upon the night of the 23rd; that he had been working with Mr. Jones, of Kilnecarrig, some time before the 23rd."

[Not cross-examined.]

[Extracts from the proclamation were then read, as in the former cases.—*Vide* Kearney's case, page 723.]

Case closed on behalf of the Crown

DEFENCE.

Mr. Bushe.—My Lords, and Gentlemen of the Jury;—In behalf of the prisoner, I think it proper to apprise you at once, that he offers no other case to the consideration of the court and jury, than an impeachment of the credit of the witnesses for the crown, supported by that which, of itself, in all cases, reflects somewhat upon the credit of the accuser—the good character of the person accused. He does not intend to disgust the Court with any of those fabricated *alibies* which, I am afraid, are too frequently the defence of persons accused as he is, but he relies upon it,—and it is the only case which I am instructed to state—that you cannot conscientiously convict him of the charge, which has been brought against him, upon the evidence which has been adduced in support of it; and he trusts, that such his defence will be much fortified, when he produces persons of the first respectability to depose before you, to the excellence of his own character.

Gentlemen, there is nothing more true, than what has been urged to you upon the subject of common informers, in the very able and very constitutional and temperate statement of his majesty's attorney-general. It is perfectly true, that in most cases of conspiracy and treason, the crown is reduced to the necessity of proving the charge by accomplices alone; and the law wisely says, that for that reason, the evidence of such witnesses is admissible;—but the law has never gone farther than to say, that it was *admissible*; and has reluctantly and of necessity gone so far. And even in cases of the utmost necessity, the very competence of such a witness was formerly considered as questionable; and one of the highest authorities in the law, one of the

greatest crown lawyers, who ever practised, and one of the ablest judges, who ever presided in a court of justice, states it to have been doubtful and unsettled, at the time in which he wrote, "whether the evidence of an uncorroborated approver was admissible."—That doubt, I admit, has been since removed; and it is now the settled law, grounded upon the sad necessity of the case, that the man who comes forward, confessing his own enormities, may be listened to, when he imputes to another a participation in his own crimes. But the law, in pronouncing such evidence to be *admissible*, has left it to the jury to pronounce, whether it be *credible*; and it would be a monstrous and a cruel absurdity to suppose, that the crown was not only warranted to produce an approver against the life of an accused man, but that a jury was compelled to believe him. It is upon this distinction between the abstract *competence* of such testimony, and the *credit*, which is due to it, that I shall rely, in my address to your good understandings and humane hearts for the acquittal of the unfortunate man now standing at the bar.

Gentlemen, I have not attended any of the trials, which have lately taken place in this court; but if I am not misinformed the present case is distinguishable from them all in one respect, and if it be so distinguishable, you will be fully warranted in departing from those precedents, which former verdicts may seem to have prescribed to you. Those verdicts, I have no doubt, were duly considered, and justifiably found; but I am informed (and I believe it to be true) that in all those instances, the evidence of the approver was confirmed and supported by some collateral and accompanying testimony; whereas in the case now under your consideration, as far as regards the prisoner's guilt, not a single fact has been proved, or a single witness produced to supply the defective and suspicious proof; but the entire imputation rests upon the uncorroborated and self-condemned swearing of common informers. The principle upon which I impeach such testimony is obvious and simple—when a witness, in any case, calls upon you to believe what he says, you only venture to do so upon your conviction, that he has a sufficient sense of moral obligation. You must be convinced, that his mind is so framed, that he abhors falsehood, and is incapable of wilfully deceiving, before you can safely give credence to his narrative, and you must farther believe, that to him the solemnity of an oath is a sanction reverently considered, well understood, and conscientiously respected. With these impressions, any man is well prepared and fully justified in forming an opinion upon the authority of another; but a jurymen has something more to do than to form an opinion: he must form it upon oath: his verdict swears him to the facts to which the witness has deposed: he believes upon his oath, that which the other has sworn: he

commits his own conscience upon the concurrence of the witness, and under this responsibility for the consequences of what he does, he is called upon by common sense and by imperious duty, to weigh well, and consider deeply the character of those whose statements he adopts, and by whose oaths he swears. This may seem to impose upon juries a duty embarrassing and arduous, to require a logical estimation of evidence, and scrupulous examination of character, and to look to their verdicts for greater certainty or correctness than can be reasonably expected from human fallibility. But the wisdom of the law interposes between the conscience of the jurymen, and the hesitations of his reason, and points out an easy solution of such difficulties, as a strict attention to the circumstances of either might suggest. He is always called upon by the warning voice of the law, speaking through its constitutional organ, the presiding judge, to found a verdict of conviction only upon evidence that admits of no doubt; and in all cases where a reasonable doubt can be entertained, he is informed, that it is his duty to pronounce a verdict of acquittal. Miserable indeed, would be a situation and awful and tremendous would be the responsibility of a juror, if he were called upon in a criminal case to ground a verdict of acquittal upon a moral certainty of the innocence of the prisoner. No such thing is required of him; that moral certainty is demanded only when he convicts; he is not called upon by every obligation, human or divine, to be certain of the guilt of the fellow-creature, whose blood he is about to shed; and if he judges rashly, or partially, or precipitately in the formation of that opinion, he is much to answer for indeed;—but in the case of an acquittal, *doubt* is a sufficient foundation for his verdict. In pronouncing that a man is not guilty, he only says, that he doubts of his crime; he does not say that he is certain of his innocence: and if the judgment which he forms in entertaining these doubts, be unfounded or mistaken, light is comparatively venial is the offence, and small indeed is the responsibility which attends. Humanity pleads for that mistake, and justice though disappointed of a victim, pardons the error which defrauds its vengeance. This is not my doctrine; it is the language of that law, which, I am certain, you will bear as lordship expound to you in the same manner that I have done, but with greater authority than I can give—of that law whose benevolent and wise first principle is this,—*that it is better for society that ninety-nine criminals should escape than that one innocent man should suffer*. In the name of that law, therefore, and by the value you place upon your oaths and the life of your fellow-creature, I adjure you to govern your verdict in this man's case by that sublime sentiment, as by a polar principle; acquit, if you are not certain of his guilt, and do not convict, because you may have doubt of his innocence.

Perhaps the most sanguine advocate would be bound in candour to admit, that in this case, or in any such case, there is reason to doubt of the prisoner's innocence; but I not only insist with you that that is sufficient for his acquittal, but I call upon you to say, if there be doubt of his innocence, what doubts must there be of the witness's *truth*? Gentlemen, the necessity of affecting the life of a subject by such evidence only as is credible and unimpeachable, may be well collected from the anxiety of the law in the selection of jurors. Those men who are allowed to pass upon the lives of others, must be themselves above suspicion. A certain degree of property must render them independent, and they must be the lawful and honest men of the county from which they come;—no man stained by vices, desperate in circumstances, and infamous by crimes, is allowed to pollute by his presence that sanctuary of legal purity in which you are impanelled. The law, in the emphatic simplicity of its language, calls upon the prisoner to look upon his jury as the twelve men *good, and true*, who are to stand together and hear the evidence against him; but vain and illusory is the protection of this principle, and frail and unavailing is the shield which the law throws over the culprit, if the integrity of the jury who are to try him, can be counteracted by the infamy of the witness who may accuse him, and if those whose own purity entitles them even to *hear* the evidence shall be made channels and conduits of the foul communications which flow from no other source but the lips of the miscreant who is to give it. Gentlemen, apply these principles to this case, and say whether you have heard evidence this day that can authorise you, *without a doubt left on your minds*, to take away the life of your fellow-subject at the bar.

That all that evidence is false, I do not contend, though I wish I could think so; it is the practice of every approver, to state some facts of acknowledged authority; he necessarily states his own crimes, and while he does so, no one doubts his testimony; not that he is believed from any reliance upon his credit, but that a man's admissions against himself are upon every principle not to be controverted. But there are other parts of the evidence, the truth of which, alas! cannot be disputed. The horrid and disgraceful events of the 23rd of July we know too well by melancholy experience: they have been detailed this day with a frightful accuracy, and with a disgusting fidelity, by men who were principal actors in those atrocities; but we required no such memento to recall those scenes to our minds, or to impress them upon our memories. No man, who wishes well to the peace and to the character of his native land, can ever forget the horrors of that fatal night, which outraged the one and degraded the other. No loyal man, attached to his sovereign, and to the laws of his country, can ever

forget that desperate, sanguinary, and unprovoked rebellion, contemptible in its effort, but atrocious in its principle, which threatened the subversion of social order, the dissolution of society, and the introduction of all the horrors of a murderous anarchy.

Who that respects high situation, that honours talents, that reveres integrity, or that loves virtue, can ever forget the foul and bloody tragedy which doomed to the fury of barbarian assassins the lamented lord Kilwarden? That ever to be deplored event lives in the indignation of all who admired him in public, and the sorrow of all who loved him in private life. Would to God! that the infamy of the wretches who have this day described those horrors, could induce a doubt of their existence! But, alas! the informers are corroborated here; the anguish of an orphaned and disconsolate family, the regrets of an honourable profession, the affliction of friends, and the indignation of a loyal and generous people, are all so many attesting witnesses deposing before you to the lamentable truth. But is it because the approvers whom you have this day heard have in this spoken truly, that they are to obtain credit from you? Beware of so unjust a conclusion; remember that they have not only proved those crimes to have been perpetrated, but *to have been perpetrated by themselves*;—remember, that they came forward, admitting themselves to be proficient in murder, rapine, and treason, practised in every turpitude of which human nature is capable, and that the very credit which they deserve, while they are recording their own infamy, is an argument for refusing them credit upon every other subject whatsoever.

Gentlemen, did you observe the manner in which the principal approver recounted the particulars of that guilty night? The frightful narrative was not embarrassed or intercepted by any interference of shame, compunction, or regret; without an hesitation, a tremor, or a blush, did he frigidly detail, with a horrid minuteness, the progress and consummation of an atrocious massacre, committed in his presence and by his associates in crime. The reiterated description of those horrors has not, after many months, so hardened the public ear, that any man of common feeling can listen upon these trials to the necessary repetition of the details without emotion: no frequency can habituate a well-regulated mind to such impressions; a good heart, at every reiteration of the shock, receives a fresh wound, and acquires a new sensibility. Yet he, not a casual spectator of the scene, not a reluctant auditor of the tale, but an active performer in the bloody tragedy, goes through the dreadful drama from act to act, "preserves the natural ruby in his cheek," while every honest man is frozen with horror; betrays no compunction that indicates a single latent remnant of probity or humanity, but with cold audacity and callous impenitence, pro-

claims his own depravity in the face of the Court and of the public. Did you observe the phlegmatic and hardened indifference with which he admitted all the infamies of his former life? What is that former life upon his own statement?—A history of crimes. An attested soldier in the service and pay of his sovereign, he betrays his colours and deserts his allegiance; he receives that ignominious military punishment which carries with it indelible disgrace; he embarks in the rebellion of the year 1798, aggravating the offence by desertion; he embarks again in the rebellion of the present year—not accidentally or by compulsion found in the rebel ranks, but an original traitor, a prime conspirator, an inmate of the *dépôt*, in the confidence of the leaders, recommended to them no doubt by his former exploits;—he rushes into the streets upon the 23rd of July, participates in all the excesses of that night, and thus educated in crime and familiarized to infamy, he comes forward exhibiting himself in the character of a common informer—a double traitor, as false to the treason he had espoused, as to the king against whom he rebelled.

Gentlemen, let me not be mistaken. To be false to treason, to violate illegal oaths, and to keep no faith with the enemies of his country, I impute not as crimes to this man. They are in themselves meritorious acts; and were he influenced by principle in doing so, they would be the only virtues of a life otherwise uniformly abandoned and depraved. I agree with the attorney-general, that it is not only necessary for public justice to bring forward a common approver, but that it is conducive to public good to countenance and encourage the repentant traitor; and let his antecedent crimes have been ever so enormous, it is sound wisdom and liberal policy to permit them to be expiated by a sincere return to his allegiance. But the counsel for the crown will scarcely offer this witness as an instance of a penitent rebel and converted loyalist. He does not pretend that he ever felt contrition during the progress of his offence. He engages heartily in the work; he flies upon the defeat of his party; he conceals himself; he is apprehended; he is threatened with prosecution—he then is sorry; for what? Not for having offended; but for the bad success of his enterprise. Is this penitence? Can this man, with a rope about his own neck, giving evidence in the hopes of saving his own life, be justifiably described as a contrite traitor, atoning by his present discoveries for his former crimes? Surely, it would be an abuse of language and reason to consider him as such: on the contrary, the very circumstances under which he becomes approver, raise an additional presumption against the truth of the information which he gives, for it is more consistent with the character of such a miscreant, when he finds it necessary to point out some victim in order to save his own life, that he should mark for his sacrifice

an innocent man, than that he should give to justice a real confederate.

There is no observation which I have made upon the testimony of Fleming that does not substantially apply to the other witness, both are accomplices in the same crime, both are confederated in the new guilt of a false accusation, and both are prompted by the same motive, the hopes of an undeserved impunity: let me, however, warn you against yielding to the vulgar error of inaccurate reasoning, or caution you against supposing that any thing which either of those men have said, can be any corroboration of what has been sworn to by the other. The immorality which describes the one, can derive no accession of strength by calling in aid the immorality of the other: two incredible witnesses cannot form credible testimony: whatever conclusion is justly to be drawn from the evidence of each considered separately, must be formed upon the evidence of both, when taken together. If witnesses, infamous and incredible, were to be multiplied *ad infinitum*, they would more produce credible testimony by virtue of their numbers, than the multiplication of cyphers would produce a quantity. The solid inference to be drawn from the concurrence of two such men in the same story, is belief that as they were formerly confederated in other crimes, the same bond of union subsists, and that they are now confederated in the new turpitude of perjury and fabrication.

Gentlemen, it would be idle to look for variations in premeditated and concerted falsehoods: in those cases such variations are least frequently to be found. When honest and unimpeachable men depose to the same fact, slight variations and apparent contradictions will often be found, which to the mind of a just reasoner present no ground for suspicion or imputation. A substantial concurrence and a circumstantial difference between credible witnesses, is perhaps the best description and the truest test of evidence: but little did it was to be expected, the two informers whom you have this day heard, are detected in a material contradiction of each other, a circumstance that goes to the very vitiation of the case, notwithstanding their repeated appearances upon this table as witnesses to the same fact, and notwithstanding the opportunity which the one enjoyed of hearing what the other swore. They were both familiar with the *dépôt*, and yet Fleming has sworn that he frequently saw the prisoner at work there, while Finerty has admitted, that he never saw him work there at any time. The fact upon which they differ is no collateral or accidental circumstance; it is a main and substantial part of the imputation against the prisoner. You will, gentlemen, draw your own conclusions from such a contradiction: for my part I shall say no more about it: I feel, that by alluding to any secondary impeachment of their testimony, I am com-

menting it in a manner that it does not deserve, and may seem to abandon the strong ground of radical objection.

That objection is their infamy. I ask you, is it probable or not, that the practised traitor and bloody assassin would be capable of perjury? Will he, who stands by and assists at the slaughter of an unoffending and unprotected man, who sees him torn from the arms of an agonized child, and butchered by remorseless ruffians, is he the man that would hesitate to plunge himself in the inferior guilt of bearing false witness against his neighbour? Believe me, the transition is easy, if it may be called a transition. It is rather a descent in crime, and perhaps the miscreant who is familiarized to the dagger, conceives himself to be comparatively innocent, when he only murders upon oath. Gentlemen, weigh these considerations well, I need not exhort you to reflect upon them coolly. It might, in other times, be an useful topic for the advocate to caution a jury against the impressions which alarm excites, and to deprecate the zeal of those feelings which tumultuous times never fail to generate or to foment. But you are of a description to whom it is unnecessary to urge such observations; and if you were otherwise, I am bound to declare, that they are rendered peculiarly useless and irrelevant, by the calm, decorous, and constitutional conduct of those trials, and by the dignified temper with which the government of this country, resisting the general impatience, has deferred the investigation of the late atrocities until the ferment of the public mind had cooled and subsided. Let me, however, remind you, that there is a public mischief peculiar to such times as those we live in. Periods of civil war and rebellion have always been fruitful in informers. It has in such seasons become a trade, and we learn from history that the melancholy and concurrent consequences have been the sacrifice of innocent individuals, the prostitution of public justice, and the disgrace of the country. I allude not merely to the *delator* of Roman story. In our own kingdoms, in the reign of Charles the second, a tribe of these miscreants flourished. The wretched and depraved policy of the times encouraged the practice, and the crime grew into fashion. It was not confined, as in this case, to ostlers and to carpenters and to the lowest of the community, but some of the proudest nobility of England condescended to the vile employment, and "all the blood of all the Howards" was insufficient to exalt an infamous individual of that illustrious name above a foul participation in the base offence. What was the consequence? Some of the purest and the richest blood in the realm stained the scaffold, and it remained for the penitence of future legislatures in reversing the attainders, to do an act of tardy and ineffectual justice to the memory of the victims, thus sacrificed to the eternal reproach of law, and the inde-

libile disgrace of the nation. Gentlemen, these historical lights are not unedifying; it is the advantage and privilege of later times, that we can avail ourselves of the errors as well as of the wisdom of our ancestors; and it is the melancholy reflexion of those, who study history, that it teaches oftener by negative than by positive instruction, and furnishes more examples to avoid than to imitate.

Gentlemen, I should manifest a want of candour little creditable to myself, or serviceable to my client, if I were to pass by without observation a part of the evidence which possibly has made some impression upon you. I allude to the account which has been given of the prisoner's conduct and demeanor at the time of his apprehension in the county of Wicklow. Those facts have been disclosed by a respectable magistrate of that county, whose veracity cannot be questioned; but the conclusion intended to be drawn from them appears to me to be stronger than fair reasoning will warrant. That a man at such a period should leave his home and be found in a distant place, passing under an assumed name, is beyond all doubt a circumstance of much suspicion; it is such a circumstance as ought to conclude a grand jury, whose office is merely to inquire whether there be a sufficient ground for putting a matter into a course of inquiry, and it is one, which in the progress of that inquiry would, I admit, suggest much doubt of the innocence of the person of whom such facts were told. But I cannot too often remind you, that you are not impanelled to find any verdict upon doubts, *except a verdict of acquittal*. If you convict, it must be upon positive proof, and not upon suspicion and surmise. That the utmost conclusion to be drawn from the fact is suspicion and surmise appears from this, that if the fact stood alone, it never could warrant a conviction, and no jury, whatever might be their doubts of the prisoner's innocence, would for a moment hesitate to acquit. I ask you, then, does it not to all intents and purposes stand alone? If there be any weight in the observations I have urged to you, the evidence of the informers must go for nothing, and be put out of the case: no intelligent jury would suffer their testimony to make even an ingredient in their verdict. Does it derive, then, any corroboration from the circumstance now alluded to? Surely not. That, which of itself only suggests a suspicion, cannot confirm in any respect that which antecedently was unworthy of belief; the utmost that could follow would be, that what was actually discredited before may become somewhat doubtful; and the mind may be disposed to go so far as to say, that by possibility it may be true. But is that enough? Surely not. You must believe *without doubt or scruple*, if you convict; and if not, your verdict would convict yourselves, as well as the prisoner. But consider whether the fact relied upon is

so conclusive as it is supposed to be: an honest and a firm man, I admit, will stand his ground upon all occasions; but a man may be honest and not be firm: timidity and weakness may suggest to one man, what from the most conscious guilt would scarcely occur to another. You all recollect the agitation and alarm which pervaded this city after the 23rd of July; the spirit of unvaried vigilance, and the almost unrestrained zeal that animated all its loyal inhabitants. Judge, then, whether in such a moment a man of the rank of a mechanic, living near Thomas-street, and unfortunately connected by relationship with a traitor, might not justifiably tremble for his liberty or his life; consider whether such a man, however innocent, might not be tempted to adopt those measures which guilt would also pursue, and by infirmity and indiscretion incur an undeserved suspicion? If that were the case, surely you would never make such suspicion the foundation of that awful verdict, which carries with it the dreadful penalties of high treason, the loss of life, with every aggravating circumstance that can make death terrible,—the forfeiture of property, attain of blood, and eternal infamy of name. Surely you will pause, before you involve a fellow creature in all this; even though a doubt of his innocence should be raised by a circumstance of suspicion; and you will remember, that such suspicion is in no manner fortified, but by the blasted testimony of rebels and murderers, upon whose swearing every thing is doubtful, except their own depravity.

Gentlemen, I am instructed to say, that we shall produce to you the most respectable witnesses to the character of my client.—He will be represented to you as a man of sober and frugal habits, strict morals, and laborious industry; exemplary in all the relations of life, in that humble sphere in which he moves: he will be proved to you, to have resisted the universal infection which pervaded his class in the trying season of the year 1798, and to have been conspicuous for loyalty and peaceable demeanor.—You will judge whether such a man was likely to engage in a conspiracy against the state, or to aspire to the dreadful eminence of revolutionary power:—you will balance, by the doubts which such a character must suggest, those suspicions which the evidence may have excited, and you will be warranted in favour of such a man to give favourable constructions to all that is equivocal, and mercifully to interpret whatever is obscure.—To the crown, mercy exclusively belongs; and I address you, not to usurp or interfere with that prerogative, but I exhort you to consider the question before you with the temper in which a humane heart always co-operates with a sound understanding.—You will remember, that by our law the object of punishment is not vengeance, but example; its principle is to prevent the commission of offences in future, and it does not affect the

vain office of avenging or repairing the past.—such mischief is irreparable, and such disgrace is indelible: hecatombs of victims can not atone for the loss of that great and good man, whose tragical fate has given our dreadful celebrity to our late commotions.—In the progress of public example, many have already been sacrificed to justice.—perhaps the multiplication of such instances hurts more than it edifies, and you have had an opportunity to observe, that it is not more the interest of mankind, than it is the wish of humane characters who prosecute for a crown, that the tranquillity of the country should be restored with the smallest possible effusion of human blood.

Michael Sanford sworn. — Examined by Mr. Magrath.

Do you know the prisoner?—Yes.

How long?—Since the first of July.

Did you know him before?—No.

What knowledge had you of him?—I wanted a carriage room behind my house, and I employed a bricklayer for the purpose, and desired him to bring a carpenter, and he brought this man, and he worked with me.

How long?—Eight or ten days.

Did he work diligently during that time?—He did, because the bricklayer's work was going on.

Do you know his general character or conduct?—I never knew him before.

Alexander Mac Owen sworn.—Examined by Mr. Bushe.

Do you know the prisoner?—I do.

How long?—I have known him a long time; since he was a boy.

What is his general conduct and character?—Very good; he wrought with me in Captain Dickenson's cotton mill.

His conduct you say was good?—Yes.

Was he industrious?—Yes.

Peaceable?—Yes. He wrought with me since he learned his trade till nine months ago.

Do you remember the year 1798?—I do.

During that time, was his conduct peaceable?—I never heard a word of any thing disaffected charged against him; I thought him well affected and was much surprised at the issue of this matter; I could not believe it. I heard he was in the dépôt.

Alexander Mac Owen cross-examined by Mr. Attorney General.

Where do you reside?—At Finglass-bury.

When did you see the prisoner last before the rebellion?—I cannot well tell; I suppose about a month or six weeks.

During that month, or six weeks, he did not work with you?—No; he worked in Dublin.

Did you know Mac Intosh?—No.

Can you form any belief, whether he was in connexion of the prisoner?—No, I cannot.

[Case closed on behalf of the prisoner.]

The evidence was not spoken to by counsel upon either side.

SUMMING UP.

Lord Norbury.—Gentlemen of the Jury; The prisoner stands indicted of high treason; you have heard the indictment read, and the overt acts which are applicable to the several species of treason, with which the prisoner is charged. They are sufficiently within your comprehension, and I shall only trouble you with a cursory repetition of them, in order to guide your attention, when you are applying the evidence which has been adduced to prove these overt acts. The first overt act stated in that count which charges the prisoner with compassing the king's death, is, that the prisoner did conspire and make public war and insurrection, for the purpose of overthrowing the government. Secondly, that he did associate himself with several traitors and did bear arms and carry weapons for the purpose aforesaid. Next, that in prosecution of that treason, he with a multitude of persons, armed and arrayed in a warlike manner, did levy war against the king. The next count is for conspiring to levy war; and that he did actually levy war is laid as an overt act of that latter treason.

In order to support this case upon the part of the crown, the first witness examined was Mr. Wilson.

[His lordship stated the whole of the evidence, accompanying his statement with occasional observations.]

He said, the witness Fleming was charged with having violated his oath to the United Irishman.—It could not be inferred from any principle of justice, religion, or morality, that the violation of such an oath was criminal.—It was a wicked and abominable obligation, derogatory to every duty which man owed to God and his country.—It was the contrivance of desperate and wicked men to secure assistance, and he who took it could only be reconciled to society by totally disregarding such an oath—it was more honoured in the breach, than in the observance.

The prisoner when apprehended, said, he had been working with Mr. Jones; he had an opportunity of producing Mr. Jones, to show that fact; which would be evidence to establish the impossibility of his partaking in the guilt of the night of the 23rd of July. He was asked, "where he was upon that night;" and from that moment, and from his commitment, he knew, that the charge against him was the business of the 23rd of July. His exculpation then was, that he worked with Mr. Jones, whose place of residence he mentioned, but he does not produce him. I will not draw other arguments or conclusions from this conduct—that is your province—but it is material to observe, that it was competent to

the prisoner to call Mr. Jones, or account why he did not produce him.

Gentlemen, several observations have been made by the prisoner's counsel, which will be received by you with that attention, which the weight of them deserves, recommended as they are by the acknowledged talent of the advocate. Some topics, however, have been urged, which were suggested by the necessity of the case, and ought not to pass without observation. He stated the doubt of a great legal man with respect to the admission of a single corroborated accomplice as competent to convict a person accused of a crime. But it is admitted, that whatever doubt might have been formerly entertained, modern authorities have accepted of such evidence, leaving always the measure of credibility to the jury. So far, what was urged by the counsel was true. He, however, did advance and allege, that this case rested upon the uncorroborated testimony of approvers, and that it was impossible for two witnesses to form a body of evidence, sufficient to establish conviction, if each of these witnesses separately taken was himself incredible. Gentlemen, before I go into any extent of observation upon the subject, I am bound to say, that this is not the case of one uncorroborated accomplice, or of two uncorroborated accomplices; for undoubtedly here is evidence, which has been always received and considered of importance, from whence you may infer (but it is entirely for you and not for me to say), that it tends strongly to support the testimony of the accomplices.

It has been held, upon principles of sound reasoning, that in addition to a body of evidence, where there has been primary testimony, with regard to imputed guilt, the circumstance of flight, seeming to be the consequence of that defined charge, is in contemplation of law strongly corroborative of the charge.

It is said, that the act of disclosing his own guilt diminishes the credit which an accomplice otherwise might have; that demands observation, because the result is exactly the reverse in reason, law, and adjudged authorities. To render an accomplice entitled to be admitted upon the part of the crown, the disclosure of his own guilt, and the full account of his participation in it, is deemed of absolute necessity. The keeping back any thing would be an imputation upon his credit. The converse of the proposition must have its weight. In the case of *Caroline Rudd*,* all the principles upon this subject are stated, and there it is mentioned as an incident, both to entitle the witness to credit with the jury and to favour with the crown, namely, a disclosure of the guilt, without which neither credit nor favour ought to be granted. That case came before the court of

* Cowp. 381, 1 Leach's Cases, Crown Law, 115.

King's-bench, upon a motion to bail Mrs. Rudd, and the judges gave their opinion *seriatim*, so that it may be considered as a solemn adjudication.

The learned counsel seemed to argue, that there was an equal obligation in the oath of the United Irishmen, and the oath to the crown, and that the degree of levity with which the witness treated them must affect his credit upon the present occasion; and that if such witnesses were multiplied *ad infinitum*, their evidence could not amount to more than that of an accomplice. I take it to be a principle, that if a witness be consistent with himself in every part, it is a circumstance in favour of his credit; but if another man gives the same account, and notwithstanding all the sifting and examination to make them vary, they are still consistent, it is a step towards the confirmation of the first, more than if the case rested upon his solitary testimony.

But these two witnesses appear to have participated in the same guilt; and it is for you, gentlemen, to decide upon their credit, after a due attention to all the circumstances which have appeared, and all the witnesses you have heard.

Some observations have been made with respect to former occasions, and the dangers which arose in the times of civil war, when informers of plots came forward, and some of the ablest men in England, suffered by such testimony. I am very desirous, that every thing which can guide the mind of a jury, whether taken from history, or discussions upon all the possible mischiefs, which may arise, should go to the jury.

With regard to the fabrications in other times, the objection did not now apply, because no question here was made as to the existence of the conspiracy; and that fact being admitted, the objection to the testimony of an accomplice giving a detail of the transaction would go to the rejection of such evidence altogether; and if it were true, that one accomplice was not credible, because he acknowledged his own guilt, and that he cannot be confirmed by another, though telling the precise same facts, what would become of the country, where treason is hatched in private, matured in secret, and if not disclosed by the associates in it, the guilt of all would escape? No such doctrine has been held for a century, nor since the case of Charnock, and it has been well observed, that not only policy, but legal principle and sound sense have fortified the propriety of receiving an accomplice in crimes to give evidence against his associates.

As to the effect which may follow from conviction, it is not the duty of a judge to observe upon.—But I am bound to tell you, that the species of evidence which has been this day submitted to you, has been often received; and under the authority of the judges of England, a man may be convicted by the testi-

mony of one such witness. But however, that is not this case. Here are two accomplices consistent, and there is another branch of evidence unimpeached, and uncontested.—the flight of the prisoner, the assumption of a feigned name and character, and account of his employment incompatible with the charge imputed to him; and yet no piece is produced to account either for the change of name, or the route he travelled, or to show that he was employed during the period as said he was at Kilnecarrig.

Gentlemen, I have stated to you the body of evidence which has been adduced to support the case on behalf of the crown. On the part of the prisoner two gentlemen have been examined to his character. One of them was Mr. Sanford, who says, he knew nothing of the prisoner until the 1st day of July last, that he worked for him eight or nine days; he knew nothing of his character. The other witness was Mr. Mac Owen, who stated his knowledge of the prisoner for a considerable length of time, and deposed to his character for being a well conducted, industrious, peaceable man, and against whom the witness never heard any thing disaffected except until the present accusation.

With respect to the flight and change of name by the prisoner, it was said, that through weakness on account of his companions he might have changed his name without being really guilty. I do not wish to take away the effect of such an observation. But it is for you, gentlemen, to determine, whether a innocent man could be driven to so weak a refuge, because he was in company with another, who was supposed to be a rebel;—whether that was natural conduct it is for you to determine.—I have gone through the evidence, and presumed to suggest some answers to the legal effect of the arguments urged by the counsel, not for the purpose of imputing any thing to what has been offered, but as they might operate upon men of less sagacity than you are. You will give as much weight to the arguments which have been urged on behalf of the prisoner, and if you have any rational doubt, such as honest men may entertain, in discharge of your sacred duty between the prisoner and the country, you ought to acquit him. But if you find the evidence coercive and obligatory upon your minds, in that case it will be your duty to convict. Confer together upon the case, and return such verdict as will be agreeable to your own consciences and the justice of the country.

The jury retired, and after deliberating some minutes, returned a verdict of GUILTY.

Mr. Attorney General.—My lords, I now to pray the judgment of the court upon the prisoner.

The Prisoner was accordingly called to his indictment read, and he was asked in the usual way, what he had to say, why judgment should not be pronounced against him.

Prisoner.—My lord, I pray a long day.—I declare before God and the world, that I never carried a pike, nor shed a drop of human blood in anger; nor did I see lord Kilwarden, but the carriage; and of all the men I have heard of, he would be the last I would attack (if I were so infatuated as to attempt any man's life in cold blood) on account of his excellent character; and I make this declaration, as if I was appearing before the awful throne of supreme majesty. I neither had a pike, nor fired a shot, nor did I see any thing but the carriage. Let my fate be a warning to all men how they appear upon such occasions. I do not make this declaration of my innocence in expectation of a long day, which I have solicited; because, if you desire it, I am ready to go out to-morrow, conscious of my own innocence.

Lord Norbury.—Thomas Keenan, the interval which has been allowed you to show any reason, why the sentence of the law should not be pronounced, you have availed yourself of. But I am now to observe to you, that the crime of which you have been found guilty is high treason, for raising, and joining in an insurrection to make a cruel attempt to overthrow the government of the country. You joined with false traitors to accomplish that design, and that is a matter of which you have been so palpably and clearly convicted, that your own conscience will not suffer you to deny it, or the evidence by which the fact has been proved against you.

I am sure it is no wish of mine to load you with more atrocities than may be absolutely necessary to impress you with a due sense of your situation. If I knew how to wipe away the offences which have been fastened upon you by the law and the verdict of the jury, I would endeavour to console you. But as to your having joined in a conspiracy with desperate and cruel men to overthrow every thing which is valuable to society, you have not the hardihood to deny it. You have been engaged in the most cruel, unprovoked, and unnatural rebellion that is to be heard of in the history of the world. It was so groundless, so unprovoked, and unnatural, that not a single word has been, or can be said either in public or private in favour of the men, who have been engaged in it. You were living under the protection of the most free government in the world. You are an artificer, capable of earning a livelihood, and even of acquiring wealth: but you abandoned those comforts, and joined in treasonable designs to destroy that constitution which protected you; and this, with a knowledge of the fate of a former attempt in 1798, which was put down, after bringing numerous mischiefs upon the country.

After making a few necessary examples, the king came to his parliament to obtain its assistance to frame an act of general pardon, inviting all his rebellious subjects back to their allegiance.—The act of 1798 recites, "The king's desire to show his royal inclination to

"mercy, and to encourage his subjects to return and continue in their obedience, rather by acts of grace and mercy, than by a severe execution of justice, not doubting, but that however it might be received by those who are obstinately bent on the ruin of their country, it raises a due sense of gratitude in all who have been artfully misled into treasonable practices."

The effects of that rebellion had very much subsided.—Thank God! the great body of the people returned to their allegiance. The country advanced in prosperity—men of your condition were every where employed to repair the ravages which had been committed, and the wealth of the rich was distributed among those who chose to be industrious.

And what is the season in which you have again broken out? The government was munificent and merciful. There were no severities practised upon any order, or rank of people. But a war commenced between this empire and a desperate and cruel tyrant, who has involved a great proportion of the world in trouble and misery; that was the season in which you chose to bring this calamity of rebellion upon the country. No complaint was made; nor was there foundation for any; but at midnight, without notice of any kind, you issued forth, under the auspices of a desperate set of ruffians, calling themselves "generals"—to attack—whom?—those who protected you, and were enabling you to grow wealthy, if you thought proper. Your generals, like all iniquitous conspirators, became the first fugitives;—discomfited and routed, they ranged over those mountains, which you traversed, before you reached the town of Arklow.—You went off with Mac Intosh, a brother carpenter, who came from another country, probably when disturbances were breaking out there, and brought the mischief here.

Justice has overtaken you and brought you to trial.—What species of trial have you had?—Is it such as a military tribunal formed under the authority of "the Provisional Government" would have allowed? Were you proceeded against hastily—without an opportunity of preparing for your defence?—You have had an opportunity since the 26th of July till this moment; and if you were an innocent, honest man employed by Mr. Jones, of Kilmecarrig, you could have brought him forward.

But you make an excuse now, that you did not kill any man in cold blood, or in anger. But you joined in a conspiracy, which, if it had succeeded, would have deluged the country in blood. You supported that conspiracy as far as you could, and you claim the protection of innocence now, because you say, you did not murder any individual; I tell you this,—that you were guilty of the murder of every individual who fell that night, if you engaged in the conspiracy and supported it, as appears, until you were stopped by the king's forces.—There was not a murder committed of which you had not a share.

I will not consume more of the public time, than is necessary. But you have talked of another tribunal, before which you are to appear. I wish to prepare you for it; and if I had a word of comfort to give you before that awful sentence, which must send you there, I would give it to you. Because it is not for the purpose of making use of severe expressions that I address you; it is only to remind you of that fate, which your crimes have brought upon you and public example requires.

You are to appear before a dread tribunal, where the secrets of all men's hearts are unfolded beyond the possibility of concealment. It is not because works of darkness—midnight assassination—escape the light until they are

brought forward to the bar of justice, that therefore you are to hope any such concealment can avail before the Searcher of all hearts. I beg you to use the time which is left for you in preparing for eternity. With this exhortation, I leave you, to pronounce the dreadful sentence of the law, which I do with great pain and feeling; though it is a sentence of justice which all men are doomed to suffer who violate these laws under which they might live with comfort and happiness.

The learned judge then pronounced the sentence in the usual form.

The prisoner was executed in Thomastreet, on Wednesday, 5th October.

668. Trial of DENIS LAMBERT REDMOND for High Treason; before the Court holden under a Special Commission at Dublin, on Wednesday October the 5th : 43 GEORGE III. A. D. 1803.*

SPECIAL COMMISSION.

Wednesday, October 5th, 1803.

Judges present :—Lord Norbury, Mr. Baron George, and Mr. Baron Daly.

Denis Lambert Redmond was put to the bar, and arraigned upon the following indictment:

County of Dub- } THE jurors for our lord the
lin to wit. } king upon their oath present that Denis Lambert Redmond late of the Coal-quay in the city and county of the city of Dublin gentleman being a subject of our said lord the now king not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and intending the peace and common tranquillity of this kingdom to disquiet molest and disturb and the government and constitution of this realm to change subvert and alter and our said lord the king from the royal state title honor power imperial crown and government of this realm to depose and deprive and our said lord the present king to death and final destruction to bring and put he the said Denis Lambert Redmond on the twenty-third day of July in the forty-third year of the reign of our said

lord the king at the Coal-quay aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend our said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and bring and put to death and that to fulfil perfect and bring to effect his most evil and wicked treason and treasonable imaginations and compassings aforesaid he the said Denis Lambert Redmond as such false traitor as aforesaid on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king at the Coal-quay aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did leave and go out of the dwelling house of him the said Denis Lambert Redmond there situate for the purpose of meeting advising consulting conspiring confederating and agreeing to and with divers other false traitors whose names are to the jurors aforesaid unknown of concerning and upon the raising levying and making public war against our said lord the king within this kingdom and the time place and manner of beginning and carrying on the said public war against our said lord the king

And afterwards to wit on the said 23rd day of July in the said forty-third year of the reign of our said lord the king with force and arms at the Coal Quay aforesaid, in the city and county of the city of Dublin aforesaid the said Denis Lambert Redmond as such false traitor as aforesaid in further prosecution of his treasonable purposes aforesaid falsely

* From the Report of William Ridgeway, Esq. Barrister at Law.

maliciously and traitorously did leave and go out of the dwelling house of some person to the jurors unknown, there situate for the purpose of meeting advising consulting conspiring confederating and agreeing to and with divers other false traitors whose names are to the said jurors unknown of and concerning and upon the raising levying and making public war against our said lord the king within this kingdom and the time place and manner of beginning and carrying on the said public war against our said lord the king

And afterwards to wit on the said 23rd day of July in the said forty-third year of the reign of our said lord the king with force and arms at the Coal-quay aforesaid the said Denis Lambert Redmond as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid falsely maliciously and traitorously did conspire confederate and agree to and with divers other false traitors whose names are to the jurors aforesaid unknown to raise levy and make a public and cruel insurrection rebellion and war against our said sovereign lord the king within this kingdom.

And afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at the Coal-quay aforesaid in the city and county of the city of Dublin aforesaid he the said Denis Lambert Redmond as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid falsely maliciously and traitorously did make and prepare and did cause to be made and prepared divers weapons called pikes with intent that divers other false traitors whose names are to the said jurors unknown should be armed with the said pikes and being so armed should use the same in and for the raising making and carrying on insurrection rebellion and war against our said lord the king and in and for committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king in this kingdom

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And afterwards to wit on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king with force and arms at the Coal-quay aforesaid in the city and county of the city of Dublin aforesaid the said Denis Lambert Redmond as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid falsely maliciously and traitorously did employ and cause to be employed divers persons to the jurors unknown in forming shaping and preparing divers wooden poles of a great length to wit of the length of six feet in order and with intent that a sharp pointed piece of iron should be thereafter affixed to the end of each of said poles and that divers pikes should be thereby made and constructed and that divers other false traitors to the jurors unknown should be armed with the said pikes and being so armed should use the same in aid for the raising making and carrying on insurrection rebellion and war against our said lord the king and in and for committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said lord the king in this kingdom

And that afterwards to wit on the said twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at the Coal-quay aforesaid in the city and county of the city of Dublin aforesaid the said Denis Lambert Redmond as such false traitor as aforesaid in further prosecution of his treason and treasonable purposes aforesaid with a great multitude of persons whose names are to the jurors unknown to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with guns swords and pikes being then and there unlawfully and traitorously assembled and gathered against our said lord the king falsely maliciously and traitorously did prepare levy ordain and make public war against our said lord the king against the duty of the allegiance of him the said Denis Lambert Redmond against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

And the jurors of our said lord the king upon their oath do further present that the said Denis Lambert Redmond being a subject of our said lord the now king and not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil and entirely withdrawing the love and true and due obedience which every subject of our said lord the king should and of right ought to bear towards our said sovereign lord the king and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom on the twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at the Coal-quay aforesaid in the city and county of the city

I will not consume more of the public time, than is necessary. But you have talked of another tribunal, before which you are to appear. I wish to prepare you for it; and if I had a word of comfort to give you before that awful sentence, which must send you there, I would give it to you. Because it is not for the purpose of making use of severe expressions that I address you; it is only to remind you of that fate, which your crimes have brought upon you and public example requires.

You are to appear before a dread tribunal, where the secrets of all men's hearts are unfolded beyond the possibility of concealment. It is not because works of darkness—midnight assassination—escape the light until they are

brought forward to the bar of justice, but therefore you are to hope any such concealment can avail before the searcher of all hearts. I beg you to use the time which is left for you in preparing for eternity. We this exhortation, I leave you, to pronounce the dreadful sentence of the law, which I do with great pain and feeling; though it is a sentence of justice which all men are doomed to see who violate these laws under which they might live with comfort and happiness.

The learned judge then pronounced the sentence in the usual form.

The prisoner was executed in this street, on Wednesday, 5th October.

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lord the king at the Coal-quay aforesaid in the city and county of the city of Dublin said with force and arms falsely wickedly and traitorously did compass imagine and put our said lord the king then and there his preme true and lawful lord of and from the royal state crown title power and government of this realm to depose and wholly deprive and our said lord the king to kill and lay and put to death and that to fulfil perfect bring to effect his most evil and wicked treason and treasonable imaginations and compassings aforesaid he the said Denis Lambert Redmond as such false traitor as aforesaid on the said twenty-third day of July in the said forty-third year of the reign of our said lord the king at the Coal-quay aforesaid in the city and county of the city of Dublin did said with force and arms falsely maliciously and traitorously did leave and go out of the dwelling house of him the said Denis Lambert Redmond there situate for the purpose of meeting advising consulting conspiring confederating and agreeing to and with other false traitors whose names are to the jurors aforesaid unknown of concerning upon the raising levying and making war against our said lord the king within the kingdom and the time place and manner beginning and carrying on the said public war against our said lord the king

And afterwards to wit on the said 23rd day of July in the said forty-third year of the reign of our said lord the king with force and arms at the Coal Quay aforesaid, in the city and county of the city of Dublin aforesaid the said Denis Lambert Redmond as such false traitor as in further prosecution of his treasonable purposes aforesaid did

* From the Report of William Ridgeway, Esq. Barrister at Law.

that he has done. I am instructed to tell you, that we shall support that accusation by adducing evidence sufficient to demonstrate, that he has been engaged in a treasonable conspiracy to wage war against the king, and to alter the laws, constitution, and government of the country by force. And that he has prepared, or that under his direction there have been prepared, pikes for the purpose of engaging in that species of treason; that he converted his own mansion house, in which he might have lived with security, protected by the laws of his country, into an arsenal, for the purpose of arming rebels to destroy those laws. If we shall produce such evidence before you; if we show that he has embarked in such a treasonable conspiracy; if we follow it up by proving, that he converted his house into a dépôt for the reception of arms for the purpose which I have stated, I think I am at liberty to tell you, under the correction of the court, that the only difficulty which can remain will be as to the credibility of the testimony; for if you are satisfied as to its truth, nothing can be more clear, than that in point of law, the prisoner must be found guilty.

Gentlemen, it will appear that Patrick Mac Cabe, one of the witnesses for the crown, was applied to in the evening of the 22nd of July, by a person of the name of Allen, who then lived in College-green, to hold an interview with him upon the subject of the intended conspiracy. Allen is a gentleman of some little celebrity upon these occasions; he had the good fortune of an honourable acquittal at Maidstone * upon a charge of high treason, and an indictment of a similar nature has been lately found against him here, which will afford him an opportunity of a second acquittal, if he shall be pleased to make his appearance. Whether he will be produced here as a witness for the prisoner, I am not at liberty to say; but after the most diligent search, he has not been found by the officers of justice. After some preliminary conversation upon the subject, which was then for the first time brought to the attention of Mac Cabe, Allen appointed him to call at his house at an early hour the next morning; Mac Cabe accordingly called on Allen at six o'clock, and they both went to another person, whose name it is not necessary to mention, and then the three proceeded to the residence of the prisoner upon the Coal-quay in this city. Allen and Mac Cabe walked on towards the canal; the person who accompanied them went to Redmond's house, brought him out and overtook the others in a field adjoining the canal: there they entered into a full view of the intended insurrection; they spoke of taking the Castle; of their dépôt of arms and ammunition; they consulted upon the best mode of attacking the artillery at Island-Bridge, they considered, whether the people were sufficiently ripe for

the attempt, and some little difference of opinion having arisen upon that head, Allen and the prisoner persevered in their purpose; they said that the people were perfectly ripe, and that not a moment should be lost in forwarding the insurrection, which had been fixed for the hour between nine and ten that evening; in short, their treasonable discussions entered so fully and so minutely into what actually happened, that no reasonable doubt can be entertained of their privacy and concurrence.

Having thus deliberated some time upon the plan, they retired to the house of one Browne, a publican near Island Bridge, where they breakfasted. We shall be able to fortify the account of Mac Cabe by producing Browne, who will state to you that they breakfasted at his house; they again renewed their conversation upon the intended attack, but not in the presence of Browne, who was a loyal man; but they walked out into his garden, and were taking views of the different places they intended to attack. Having thus in the space of the morning, furnished two opportunities of proving this treasonable conspiracy, one in the field and another at the house of Browne, they returned; Allen went one way, and Mac Cabe, who in this conversation attracted the confidence of Redmond, accompanied him into town; the prisoner brought him to his house upon the Coal Quay, he rapped at the door, an old man let them in, and there Mac Cabe saw two carpenters rounding pike handles, and making those kinds of weapons with which most of the traitors appear to have been armed.

If the case rested here, the evidence of Mac Cabe, thus corroborated, would be sufficient to convict the prisoner of the charge; but farther circumstances remain to be stated, which contribute to fasten upon the prisoner the guilt, which we attribute to him. He resided, I presume, in that house, for a day or two after the insurrection, not aware of any suspicion against him: but the present lord mayor, alderman Hutton, having during his searches on Tuesday after the 23rd, discovered a number of pikes in a coal yard, at the back of the Coal-Quay, communicated the circumstance to major Sirr, who finding that the yard was separated only by a narrow lane from Redmond's house, thought it prudent to search it; accordingly a minute search was made in the prisoner's house, and there they discovered such preparation for rebellion, as could leave no doubt in the mind of any man who saw it, as to what was the deliberate design of the proprietor. There were found several carpenter's tools, benches for carpenters to work upon, several pieces of timber, pike handles newly finished, a quantity of wood prepared to be cut up, and they also discovered some of those beams, which the court has already had intimation of, hollow pieces of timber containing a number of pikes, but so constructed as to elude observation; forty pikes were found in each of these cases; va-

* See his case, vol. 26, p. 1191.

of Dublin aforesaid unlawfully maliciously and traitorously did compass imagine and intend to raise and levy war insurrection and rebellion against our said lord the king within this kingdom And in order to fulfil and bring to effect the said traitorous compassing imaginations and intentions of him the said Denis Lambert Redmond he the said Denis Lambert Redmond afterwards to wit on the said twenty-third day of July in the forty-third year of the reign of our said lord the king with force and arms at the Coal-quay aforesaid in the city and county of the city of Dublin aforesaid with a great multitude of persons whose names are to the said jurors unknown to a great number to wit to the number of one hundred persons and upwards armed and arrayed in a warlike manner to wit with swords guns and pikes being then and there unlawfully maliciously and traitorously assembled and gathered together against our said lord the now king most wickedly maliciously and traitorously did ordain prepare levy and make public war against our said lord the king

And also then and there with force and arms falsely and traitorously did employ and cause to be employed divers persons to the jurors unknown in forming shaping and preparing divers wooden poles of a great length to wit to the length of nine feet in order and with intent that a sharp pointed piece of iron should be thereafter affixed to the end of the said poles and that divers pikes should be thereby made and constructed and that divers other false traitors to the jurors unknown should be armed with the said pikes and being so armed should use the same in and for carrying on the said war against our said lord the king

And also then and there with force and arms falsely and traitorously did make and prepare and did cause to be made and prepared divers swords guns and pikes with intent that divers other false traitors to the jurors unknown should be armed with the said swords guns and pikes so prepared and being so armed should use the same in and for carrying on the said war against our said lord the king contrary to the duty of the allegiance of him the said Denis Lambert Redmond against the peace of our said lord the king his crown and dignity and contrary to the form of the statute in such case made and provided

The prisoner pleaded Not Guilty; and being asked whether he was ready for trial, answered in the affirmative.

The following jury was then sworn, after fourteen had been set by on behalf of the crown, and twenty had been challenged peremptorily by the prisoner.

Robert Law,	Robert Norman,
Francis Kirpatrick,	Godfrey Byrne,
Luke Stock,	William Moore,
William Porter,	Francis Beggs,

George Thompson, Robert Hunter,
George Wilkinson, Fennell Collins.

The prisoner was given in charge.
The counsel and agents for the Crown were the same as on the preceding trial.

Counsel for the Prisoner.

Mr. Mac Nally.

Mr. Campbell.

Agent.—Mr. L. Mac Nally.

Mr. Townsend opened the indictment.

Mr. Attorney General.—May it please your Lordships, Gentlemen of the Jury; You are called upon, I believe, for the last time to commission, to discharge towards your law and country the very important duty which is attached to your situation as jurors. I could add, that the purposes of justice have been fully satisfied, but I am obliged to you, with infinite regret, that sufficient reason behind to occupy the attention of juries at a future occasion; and that I fear, after a very long interval, I shall be under the necessity of resuming these prosecutions; I feel however much pleasure in observing, that during the progress of this commission, the citizens of Dublin have with considerable accuracy discharged their duty by a regular attendance upon the court; and I am happy to see that the coolness, deliberation and justice of their decisions as jurors, have universally received the tribute of public approbation. In the present trial you will follow the same calm and steady course which they have pursued. No former prisoner had greater occasion than the present to call upon you for cool and dispassionate investigation, and I am sure you will cheerfully extend it to him; his peculiar circumstances * require that you should obliterate from your minds the recollection of every thing connected with the accusation now preferred against him; and that in deciding upon the truth of it, you should be governed only by the evidence, which shall be now produced to support it.

Gentlemen, you have heard the indictment read, by which the grievous crime of high treason is imputed to him; and that is the first intimation which you ought to have of the charge exhibited against him. You have heard him declare from the bar, that he is not guilty of this crime, and what he has thus said on his behalf should be considered by you as true, until satisfactory evidence shall be produced to do away the impression which the allegation of his own innocence ought to make. Upon that evidence you will judge, without any retrospective view or collateral consideration.

Gentlemen, the unfortunate prisoner at the bar is a man of some fortune, and some education, who certainly might have turned those qualifications to a better purpose, than from our accusation against him, we conceive

* See the Note at the end of the case.

that he has done. I am instructed to tell you, that we shall support that accusation by adducing evidence sufficient to demonstrate, that he has been engaged in a treasonable conspiracy to wage war against the king, and to alter the laws, constitution, and government of the country by force. And that he has prepared, or that under his direction there have been prepared, pikes for the purpose of engaging in that species of treason; that he converted his own mansion house, in which he might have lived with security, protected by the laws of his country, into an arsenal, for the purpose of arming rebels to destroy those laws. If we shall produce such evidence before you; if we show that he has embarked in such a treasonable conspiracy; if we follow it up by proving, that he converted his house into a depôt for the reception of arms for the purpose which I have stated, I think I am at liberty to tell you, under the correction of the court, that the only difficulty which can remain will be as to the credibility of the testimony; for if you are satisfied as to its truth, nothing can be more clear, than that in point of law, the prisoner must be found guilty.

Gentlemen, it will appear that Patrick Mac Cabe, one of the witnesses for the crown, was applied to in the evening of the 22nd of July, by a person of the name of Allen, who then lived in College-green, to hold an interview with him upon the subject of the intended conspiracy. Allen is a gentleman of some little celebrity upon these occasions; he had the good fortune of an honourable acquittal at Maidstone* upon a charge of high treason, and an indictment of a similar nature has been lately found against him here, which will afford him an opportunity of a second acquittal, if he shall be pleased to make his appearance. Whether he will be produced here as a witness for the prisoner, I am not at liberty to say; but after the most diligent search, he has not been found by the officers of justice. After some preliminary conversation upon the subject, which was then for the first time brought to the attention of Mac Cabe, Allen appointed him to call at his house at an early hour the next morning; Mac Cabe accordingly called on Allen at six o'clock, and they both went to another person, whose name it is not necessary to mention, and then the three proceeded to the residence of the prisoner upon the Coal-quay in this city. Allen and Mac Cabe walked on towards the canal; the person who accompanied them went to Redmond's house, brought him out and overtook the others in a field adjoining the canal: there they entered into a full view of the intended insurrection; they spoke of taking the Castle; of their depôt of arms and ammunition; they consulted upon the best mode of attacking the artillery at Island-Bridge, they considered, whether the people were sufficiently ripe for

the attempt, and some little difference of opinion having arisen upon that head, Allen and the prisoner persevered in their purpose; they said that the people were perfectly ripe, and that not a moment should be lost in forwarding the insurrection, which had been fixed for the hour between nine and ten that evening; in short, their treasonable discussions entered so fully and so minutely into what actually happened, that no reasonable doubt can be entertained of their privacy and concurrence.

Having thus deliberated some time upon the plan, they retired to the house of one Browne, a publican near Island Bridge, where they breakfasted. We shall be able to fortify the account of Mac Cabe by producing Browne, who will state to you that they breakfasted at his house; they again renewed their conversation upon the intended attack, but not in the presence of Browne, who was a loyal man; but they walked out into his garden, and were taking views of the different places they intended to attack. Having thus in the space of the morning, furnished two opportunities of proving this treasonable conspiracy, one in the field and another at the house of Browne, they returned; Allen went one way, and Mac Cabe, who in this conversation attracted the confidence of Redmond, accompanied him into town; the prisoner brought him to his house upon the Coal Quay, he rapped at the door, an old man let them in, and there Mac Cabe saw two carpenters rounding pike handles, and making those kinds of weapons with which most of the traitors appear to have been armed.

If the case rested here, the evidence of Mac Cabe, thus corroborated, would be sufficient to convict the prisoner of the charge; but further circumstances remain to be stated, which contribute to fasten upon the prisoner the guilt, which we attribute to him. He resided, I presume, in that house, for a day or two after the insurrection, not aware of any suspicion against him: but the present lord mayor, alderman Hutton, having during his searches on Tuesday after the 23rd, discovered a number of pikes in a coal yard, at the back of the Coal-Quay, communicated the circumstance to major Sirr, who finding that the yard was separated only by a narrow lane from Redmond's house, thought it prudent to search it; accordingly a minute search was made in the prisoner's house, and there they discovered such preparation for rebellion, as could leave no doubt in the mind of any man who saw it, as to what was the deliberate design of the proprietor. There were found several carpenter's tools, benches for carpenters to work upon, several pieces of timber, pike handles newly finished, a quantity of wood prepared to be cut up, and they also discovered some of those beams, which the court has already had intimation of, hollow pieces of timber containing a number of pikes, but so constructed as to elude observation; forty pikes were found in each of these cases; va-

* See his case, vol. 26, p. 1191.

rious other matters were discovered, and in a part of the house, were there were a few steps leading from one room into another, upon removing the steps, a number of pikes were found, thrust in there for concealment. If any thing were necessary to substantiate the evidence of Mac Cabe, who says that he saw the carpenters at work there, the circumstance of finding these articles so recently after the transaction, would be fully sufficient. What was the conduct of the prisoner upon this occasion? it would appear to be utterly impossible, that any man's house could be converted to these purposes, without his knowledge. It is probable it was not made this use of, until the very eve of the insurrection; but it could not be applied to such purposes for an hour without his privity and assent. There were no other goods whatever in the house, if goods these articles can be called; he did not say that his house was abused without his knowledge or consent; he did not state what had come to his knowledge upon the subject; he did not come forward and give information that might lead to a discovery; but conscious of his guilt, he fled from his house; he skulked for some days about the city, and afterwards endeavoured to escape on board the Tarleton, a Wexford vessel, bound to Chester.

Gentlemen, you will recollect that some four or five days after the insurrection, an order of the lord lieutenant and council was issued, that no man should be allowed to leave Ireland without obtaining a passport; and strict orders were given to the collectors and other officers of the revenue to be cautious, that no man should sail without such protection. It happened that this vessel being driven by distress into the Bay of Calingtonford, Mr. Read the surveyor of that place, put out and inquired whether there were any passengers on board; he found there were four of them; three had regular passports, but the prisoner none; when called upon for his name, his trade, and situation in life, he admitted that his name was Redmond, and said that he was going to purchase coals. When he was asked with regard to his luggage, he said he had none, that he had found it more convenient to travel with guineas, and was fortunate enough to have many at command. As to his pass, he said it was in his portmanteau which was washed overboard; this account with other circumstances of suspicion, not satisfying the officer, he apprehended the prisoner and brought him on shore. He remained in Newry some short time, made protestations of his innocence, and declared that upon writing to town, no gentleman who knew him would hesitate to send him a pass; and he requested to be detained there, until he should write a line or two to Dublin. Mr. Read was so far imposed upon as to indulge him; the prisoner accordingly wrote to alderman Trevor, but received no answer, the officer had therefore intended to

act upon his own suspicions and to bring him up to town, but at the moment he received order from government to transmit him to Dublin, without delay, the discovery that had been made in his house, having strongly corroborated the other circumstances of suspicion against him; accordingly, he was taken to Dublin; he slept one night at Drogheda, perceiving that matters were beginning to grow desperate, he acknowledged, that he had no pass at all, and that the story of being washed overboard was altogether a fabrication. In Drogheda, he industriously entered into these kinds of conversations, and at an earlier period he must have indulged in such, and which ultimately have led him into the situation in which he unfortunately finds himself. In these conversations, which are corroborative of the evidence which has been given, he extolled the happiness of France and praised the great and powerful one Buonaparté; such sentiments expressed in such a situation, are circumstances which corroborate the evidence of Mac Cabe, and show that he is not mistaken in the man, of whom he casts the imputation of treason.

Gentlemen, the prisoner at the bar was brought to town and examined; the question he was asked was, where he was upon the night of the 23rd of July, he acknowledged that he slept at his house on the Coal Quay; he was then asked what he breakfasted upon the morning of the 24th, he said he had breakfasted at his own house; major Sirr found it necessary to refresh his memory, and accordingly introduced Mac Cabe and Browne into his presence; at that moment he saw them, he retracted his former assertion, and admitted he had not breakfasted at his own house, but at Browne's house at Island-bridge; this false representation of himself and the immediate refutation of it, when he saw the witnesses who could confute him, are strong in support of the evidence which will be offered by Mac Cabe. I think it material to call your attention to these circumstances of corroboration, because Mac Cabe was certainly one of those unfortunates and deluded men, who were brought upon the fatal evening of the 23rd of July, to Allen appointed to meet them at the late Rainsford-street; he afterwards disappointed them, as many of their leaders did, upon covering too late into what a forlorn and desperate enterprise they were about to engage. Mac Cabe attended, but Allen did not; he, formerly finding himself deceived, spent some hours, but was at length taken with a blunderbuss and some ammunition, and certainly discovered under such circumstances as put him under an apprehension for his own safety; he has since made the disclosure, which I am not so partial to him as to suppose he would have made, were it not for the apprehensions which he must have entertained for himself, but it is only made by which these sorts of consequences

cies can be discovered; I do not desire his testimony to have weight from the good and moral character of the man; his having embarked in treason has detracted from the credit which you would otherwise give him, but notwithstanding, if he tells you a clear consistent story which no good subject could have it in his power to disclose (because it is impossible that private conversations between conspirators can be disclosed by any one but a conspirator, and therefore under such circumstances he is the best and most satisfactory evidence); and if he shall be corroborated by other collateral circumstances, it will be sufficient to convict the prisoner; I am not aware from the communications which have been made of Mac Cabe's evidence, that you will find a syllable fall from him which will not be supported in a very satisfactory manner by collateral evidence. And though I protest against the necessity of producing such minute corroborations, yet I think upon the whole, we shall be able upon the present occasion to lay before you in support of the accusation as as complete a system of evidence as can be delivered.

Gentlemen, I feel it my duty to state a farther circumstance; I have to call your attention to a paper prepared by the prisoner, subsequent to his arrest.

Mr. Mac Nally.—My lords, I submit that this paper should not be stated. It is a determined case, that no paper found in the possession of a prisoner subsequent to his committal can be read in evidence against him. I am prepared to argue it; but at present I submit, whether it should be stated; I put the objection in this shape:—This Court assigned agent and counsel to the prisoner; in order to prepare for his defence, if he were permitted the use of pen, ink and paper, he must commit instructions to writing, in order to lay before his counsel and agent, who were to advise him in his plea, and he is at liberty to suggest such matter as he may think proper for the purpose of consulting with them. If a man in this situation makes use of pen, ink and paper for that purpose (and no man can say this paper was not for that purpose), it would make an extraordinary precedent. I have it strong upon my recollection, that in the case of Hardy, three matters of evidence were offered. The first were papers found in his possession. The second were papers found in the possession of a co-conspirator. And the third was evidence of the manufacturing of pikes. Upon each of those, the Court ruled, first, that as to the papers found in his possession, subsequent to his committal (here it is subsequent to indictment which is still stronger), could not be read in evidence against him, and as to the papers found upon a co-conspirator, they could be read, provided there was proof to show, they were written before he was committed; but if not, they could not be read.

I have taken the liberty of throwing out VOL. XXVIII.

this in the manner I have done, and submitting to the attorney-general, whether he chooses to proceed, and state this paper to the jury. If he does, I shall make such objections to the admissibility of it in evidence as may occur to me; I shall now make an apology to the attorney-general for indulging me so much.

Mr. Attorney General.—I am sure that the interruption by Mr. Mac Nally arose from the necessity which he felt of animadverting by anticipation upon the evidence, before it was offered to the jury or the Court; and of course he laboured under the disadvantage of not knowing the nature of the evidence to which he was speaking, or the object for which it was to be produced. I should be very reluctant to state any thing on the part of the crown, unless I were previously convinced of its admissibility in evidence; and therefore, if I had the slightest doubt of the admissibility of this paper, it would be my duty to suppress it. But I offer it for the purpose of substantiating the charge against the prisoner, of having been engaged in a conspiracy to overthrow the government and constitution of the country; and I say that any paper, be it written when it may, can be produced in evidence to substantiate the charge. I take the distinction to be this; that you cannot support an indictment merely by giving evidence of an overt act committed after the indictment found. But evidence of an overt act previously committed and stated in the indictment never comes too late, and if it be not a substantive overt act of treason, but is merely evidence supplied by the prisoner, I care not when, in support of the charge previously made against him, it is not too late; and such objection as is now made never was entertained, and if I mistake not has been over-ruled.* I can also relieve the counsel from the supposition, that this paper was intended as any part of the prisoner's brief, because it was written for the avowed purpose of being printed; it is addressed to the people at large, and contains much objectionable matter, which I do not feel myself at liberty to produce to the Court and the jury. I will read particular passages; the prisoner may call for such other parts of it, as he thinks proper; but in compassion to him, I do not read it all. I shall refer to such part only as shows he was embarked in a conspiracy for the overthrow of the constitution; and as will tend to corroborate the testimony of Mac Cabe, and the evidence which will be given of his treasonable conversations at Drogheda. "Who knows yet but the day may shortly arrive, when we may find in some measure fulfilled the words of the scripture;—*An eye for an eye, a leg for a leg, and an arm for an arm?*" I trust in God,

* Hathaway's case, 5 State Trials, 492; 14 Howell's State Trials, 654; Philipps's Law of Evidence, 278, 279, 4th Ed.

"that in the hour of danger, you will show yourselves Irishmen, fighting for your long lost liberty. I beg, dear countrymen, that feeling and understanding your interests, you will be as gentle as lambs and watchful as lions, but above all be united. Be mindful how you commit yourselves to any one you don't know; do not put yourselves in the power of any one but those you know, and who have the best characters, but particularly, do not place confidence in the acquaintance of any man, when life and death is depending. When any favourable opportunity occurs, which may shortly be the case, I beg you will not do as heretofore,—take up your arms to lay them down again like a blast of wind, and then be taken prisoners and hanged like dogs; never attempt a revolution of your country, unless you are sober, steady and determined; then you may expect to conquer and free your long enslaved country, and be remembered with gratitude by posterity."

This can hardly be considered as instructions for counsel; this idle rhapsody of being gentle as lambs and watchful as lions, did not originally proceed from the gentlemen at the bar; it appeared in that inflammatory publication *The Press*,* which was circulated with great industry, amongst the weak and the credulous, by the original promoters of treason in this country. The concluding paragraph in this paper of the prisoner's, you will observe was excited by the appearance of Mac Cabe as a witness against him, and is strong to corroborate his testimony, "do not place confidence in the acquaintance of any man, when life and death is depending;" the prisoner had a confidence in Allen, and regrets that he confided in Mac Cabe, who was only known to him as the acquaintance of Allen.

I do not wish to trouble the Court or the jury with any more of this rhapsody; the part I have read clearly corroborates the testimony of the accomplice, it goes directly to show, that the prisoner was embarked in the conspiracy, and that he is one of those infatuated men, who do not repent of the barbarities which have been committed, or lament that arms were taken up; but who rather regret the rapidity with which they were abandoned, and he calls upon the people, when the opportunity offers which he hopes may be soon, not to abandon their arms again.

Gentlemen, I feel it would be a waste of public time to trespass longer upon your attention; the case is simple and clear, and if I am not much deceived, evidence will be offered which will be fully satisfactory to your minds; but upon the whole, you will exert your own judgments, and form your own conclusion; I do not see what the defence of the prisoner may be, but you will pay it all due

attention. If upon the whole, you are satisfied the charge is established, his situation of life, which is above the lower orders of people, is a considerable aggravation of offence, and as it will make his punishment less painful to you, so I trust it may make example more salutary to others.

Edward Wilson, esq. sworn and examined.
The witness gave the same evidence upon the former trials.—[*Vide same case, page 711.*]

[Not cross-examined.]

Wheeler Coultsman, esq. sworn and examined.
This witness gave the same evidence before.—[*Vide same case, page 711.*]

[Not cross-examined.]

Serjeant Thomas Rice sworn and examined.
This witness proved the proclamation before.—[*Vide same case, page 711.*]

[Not cross-examined.]

Stuart H. Douglas, esq. sworn and examined.
—This witness gave the same evidence formerly.—[*Vide same case, p. 711.*]

[Not cross-examined.]

Patrick Mac Cabe sworn.—Examined by Mr. Attorney General.

Do you recollect the insurrection took place upon the 23rd of July?—[*Yes.*]

When did you first hear that such a thing was intended?—I knew the real certainty of it the Friday before.

About what hour?—Four o'clock in the evening.

Pray who gave you the information?—A gentleman came to inform me of it.

Did you wait upon him afterwards?—[*Yes.*]

You may mention his name if it is not secret?—It was Mr. Allen.

When did you see him next after that evening?—On the morning of Saturday.

About what hour?—About half after five.

Did you and he go to any place that evening?—He and I, and another gentleman went from College-green to the Coal Quay.

What did you do there?—The gentleman went into an entry for a gentleman to be was there.

Where did you and Allen then go?—I walked towards Bloody-bridge.

Where did ye stop?—We rested there some time for the gentlemen.

Did the gentlemen come to you?—I do not believe they passed us without observing us.

Where did you see them next?—I saw them in James's-street plain.

Look at the prisoner at the bar?—I do not know him.

Was he one of those gentlemen?—He was.

Did he and the other gentleman join you and Allen?—No, they went on one side of the canal, and we on the other.

* As to which, see Finerty's case, vol. 26, p. 901, 1015.

Where did ye all meet?—We four met in a field on the one side of the second lock of the grand canal.

Do you recollect what the conversation turned upon, when ye were assembled?—It turned chiefly upon what was to happen.

Did they say what it was?—That there was a rising of the people to take place that night.

Was that said in the presence of the prisoner?—He was one of the party that was saying it, himself and Mr. Allen.

Do you recollect what they said the people were to do? did they mention any point of attack?—Yes, the point we were to attack was the barrack at Island-bridge.

Is that the Artillery barrack?—Yes.

Did they speak any thing of arms?—Yes, they said arms were provided for the purpose; Mr. Allen told me there were arms.

Had you any conversation about his majesty's castle?—There was; but we were not to have any thing to do with it. Other parties were to go there.

Mention what the conversation was about the castle?—Why, the conversation was no farther than to mention that there were parties to take it.

Was any part of it considered weaker, or more open to attack than another?—Yes, the lower part toward Ship-street gate. I cannot say whether the prisoner heard that, because Allen told that to me.

Was there any conversation about the magazine in the Park?—Yes, that it was to be attacked.

Do you know what party was to attack that?—I believe part of the party that I was to assemble with, was to attack it.

Had you any conversation respecting men from the country?—Nothing more than that we expected men from it: from the outlets between that and Clondalkin.

What did you expect them for?—To assist us.

Had ye any conversation about what part of the Artillery barrack ye would attack?—Yes; in upon the large gate.

Did they state what the object was of attacking the barrack and the magazine?—In order to get cannon and ammunition.

Do you recollect what hour they mentioned the attack was to be?—As nigh as I recollect between nine and ten o'clock.

Where did you breakfast that morning?—We breakfasted at Mr. Browne's, the corner of the lane, next the bridge.

Who breakfasted there?—The three persons I have been speaking of and myself.

Had you any conversation there about the attack?—It was chiefly the conversation.

Court.—Was there any other person with you in the field?—No, my lord.

Mr. Attorney General.—Was there any difference of opinion, with regard to the propriety of the attack?—Yes, I recollect the other man seemingly not so much inclined to begin, as Allen and the prisoner.

Mr. Campbell.—The witness should state the conversation; what seemed to him is not evidence.

Mr. Attorney General.—Did the others give any reason for beginning?—Yes; Allen said, if they did not begin then, perhaps they would not get the people so ripe as they were then.

Do you recollect what the man said, who seemed rather to wish to postpone it?—He said he would not be positive, till the middle of the day, when he would get information; but he expressed his doubts; he seemed not so willing, and I judged him to know more of the matter than either the prisoner or Allen.

After breakfast did ye pass any time about the house or garden?—Not in the garden, the prisoner and I went down to where there was a fisherman.

But before that, did you walk about the house?—No.

Where then?—He went down to a lane, where there was a fisherman, and the prisoner spoke to him; what they said I do not know.

What was done then?—Allen and the other man went to Bow-bridge, and the prisoner and I overtook them there.

What became of the party?—Allen and the other staid a while in the lane near Mount Brown, and the prisoner and I went towards his place.

Before breakfast did you walk about the garden?—I did not walk about; but the others were at the house before me; we saw them in the dining-room.

To what place did you proceed?—We came into town, and some acquaintances stopped the prisoner, and I came on to his place at the Coal Quay.

Did he join you there?—At his own house?—No, I did not wait till he came.

What did you do?—I went into an entry and rapped at the door, and an old man opened it.

Was that the same entry into which one of the party went in the morning early?—It was.

What happened after you rapped at the door?—A man opened the door, and I went in. He asked me, where the prisoner was. I told him he was coming on after me.

Did you see any work going on in the house?—I did: I saw two lads taking the squares off the handles of pikes.

Did you see many pike handles?—I think there was in and about a score.

You left the house before the prisoner returned?—I did.

When did you see Allen afterwards?—At three o'clock.

Did you apply to your employer that evening for your week's wages?—I did.

Did you get your wages?—I did, what was coming to me.

Did you make any application to Allen?—

I said, I would rather go to the country and leave the money with my wife. He asked me how much I earned? and I said, "a pound a week." He desired me to call at three o'clock, and he would give me a guinea, and not to lose time about it.

Did he give you the guinea?—He did.

That was about three or four o'clock?—It was three o'clock.

Did he give you any other token?—He desired me to call at six.

Did he give you any thing then?—He gave me a blunderbuss at six.

Did he tell you where to meet him?—Yes, he asked me did I know where was the best place to meet? I said, I considered Rainsford-street the best, as most convenient to the canal.

• Did he promise to meet you there?—He did.

Did Allen meet you there afterwards?—No, sir, he did not.

You and some others assembled there?—I went there by myself.

Have the goodness to tell the jury, as well as you can, what took place after you went to Rainsford-street with the blunderbuss?—I shall, sir. After I went to Rainsford-street, I remained there for some time, expecting Allen would call upon me. I went to a public house to get some porter, and I came out in fourteen minutes, when a multitude of persons had assembled from the canal and Somerset-street. They got round me and said, I should go along with them. I said, "I had no ammunition for the blunderbuss;" and a young man standing convenient to me, said, "he had ammunition enough;" and he handed me a little bundle made up of ball cartridge. Then there were some of the party cried out, and wanted to know, where they would get arms. A man at a distance cried out, "come along with me, and I will get you arms enough." We proceeded down Marshal-lane, and turned to the right which leads to Dirty-lane, where there was a number of pikes; I cannot describe, there were so many. After every person that came took up arms, we went into Thomas-street, and there either before or after us, I do not know which, a carriage was stopped. As I got up to it, there was a box or a trunk taken out, and two or three of them with pikes were smashing the lid. I called out to them, "it was not for plunder we were looking," and desired them not to break it. At this time, the gentleman who was in the carriage, made a race towards the church, and I said, he should be brought back, and he was, and I told him, no injury should be done to his property. Whether the things were put into the carriage again, I do not know.

To what place did the party proceed from that?—Down Vicar-street; and when I came up, they were attacking the watch-house.

Where did you go afterwards?—We proceeded towards Francis-street.

Did you meet with any opposition?—Afterwards we went down Plunket-street, and through Patrick-street; we stopped at the

Fountain in Kevin-street for a few minutes. Were you fired upon in the course of the night?—We were.

Where?—At the lower end of Francis-street, by the Coombe guard.

What became of the party?—After receiving the fire, they dispersed up Francis-street.

Were you taken in the course of the night?—I was taken in Francis-street.

How soon after the mob dispersed?—About an hour and a half after. I made the best of my way to Pimlico, and took shelter there, till such time as I considered the place safe, and then made home.

You were arrested there?—I was, at a door of the house I lodge in.

Do you recollect ever having shown to house upon the Coal Quay, in which was the morning of the 23rd of July, 1803, Sirr?—I did.

Did you show him the same house in which you saw the pike handles making?—Did, the very same.

Patrick Mac Cabe cross-examined by Mr. Campbell.

I believe, sir, you are an old and experienced traitor?—I knew something of business which was going on for some time.

Are you not an old and experienced traitor?—I do not know what you mean by traitor.

Have you not been acquainted, in the course of five years, with two rebellions?—Only one; there was but one, five years ago.

Was there not another in 1803?—There was.

Were you not an active partner in both?—I do not consider myself the worse for it.

Were you not in the rebellion of 1796?—I knew there was such a thing.

Was that all you knew of it?—I was in an engagement, but I knew of it.

Were you not sworn an United man?—I was.

Did you not hear of the transactions which took place?—Several, I did.

Were not the most dreadful atrocities and murders committed?—I cannot say.

What answer do you give?—I do not consider it murder, where one man fights against another.

Did you not hear, that during the rebellion of 1796, many barbarous murders were committed?—I heard so, but I saw none of them.

Do you believe it?—I heard so.

Do you believe it?—Just as I heard it said by others.

Were there not indiscriminate murders of men, women, and children?—I heard so.

Did you think it fair to put them to death?—I do not think it fair to put women and children to death.

Did you ever hear of Scallabogue?—I often heard of it.

Were not many men, women and children burned there?—I did not see it.

Did you hear of it?—I did hear they were burned.

You heard of many bad murders committed in that rebellion?—I did.

With a knowledge of them, did you not join in the rebellion of 1803?—I did, when I was asked.

And with your eyes open, with a knowledge of the murders which were committed 1798, you engaged in another?—I did not see any murders committed.

But you entered into another rebellion upon the 23rd of July?—I did, when they asked me.

For no other reason?—No.

How did it happen that they asked you to enter into it?—I was asked by the young man, who knew me before.

Was it because they knew your murderous principles?—No, they did not talk of murder; no man was to be killed, but in fair action.

You saw the mob break open the box, and you cried out, it was not for plunder you came?—I did.

You meant by that, that you felt a horror at plunder?—I did not like it.

But you did not feel equal horror at murder?—I would, a great deal more, if it was not in fair action.

Did you not believe that the pikes which the mob got, were intended for the purposes of murder?—The purposes of murder! The purpose to gain their liberty, as we call it.

But how could they do that, without the commission of murder?—I do not consider it murder, when one man fights another.

Do you not think it murder, when a party of ruffians meet a carriage with unarmed travellers and kill them?—I do.

Must not such things be committed by rebels?—It so happened.

From what you heard, did you not think it likely that such things would happen?—Very likely.

You desired the people to leave the box?—I did.

Had you a commission that night?—I had no commission.

Then how do you explain the direction which you gave?—When I was with them, they were asking "who was to head them;" and no one appearing, I said to the gentleman, he should not be molested.

Did not you say that, because you had some influence?—It so happened.

You were armed with a blunderbuss, others with pikes?—Yes.

How came you to be armed with a blunderbuss?—Because it was given me.

Were you a serjeant?—I was not.

Had you any commission whatever?—Not the least was given to me by any person.

Did you take any that night?—Not more than I told you.

On Friday you first heard of the rebellion?—Of the actual rising.

When did you hear of the intention?—I heard of it often, and that there would be such a thing.

When did you hear from any of the party whom you credited, that it would take place?—Not till Friday.

Were you ever in the depôt?—No.

Explain then, how is it, that you, who knew nothing of the rebellion till Friday from authority, were instantly admitted into all the secrets and confidence of the conspirators?—Allen knew me before.

He knew that your principles made you a fit person?—I cannot say but it was.

Do you not believe, that the man who would engage in a conspiracy, which, for aught he knew and had reason to expect would be attended with murder, was an extremely likely person to commit perjury? I want to know your ideas of morality: do you not believe that the man who would commit murder, would commit perjury?—I do not say but he would.

What were your motives for engaging in the rebellion?—The motive I had was to be along with the people.

Is not your motive for giving evidence this day, to save your own life?—Certainly, I cannot deny such a thing as that; but I do not know whether it will or not.

Have you not hopes that it will?—I have a hope of such a thing, as it has been usual with government to act so; but as to know what they will do with me, I know no more than the child unborn.

Has any promise of any sort been made to you?—No.

At the time you saw the two men making pike handles, the prisoner was not there?—No, he was not.

Your course of life has been this: you commenced traitor and rebel, and now you are an informer?—I cannot say.

Where did you come from this day?—I came from the Castle-yard.

Of your own free choice? you are at liberty?—No not at perfect liberty.

Do you not conceive you are a prisoner this moment?—I do.

And after going off this table you will also be a prisoner?—Yes.

Have you formed any kind of guess what will be your future destination?—I have not.

Nelson Browne sworn.—Examined by Mr. Mayne.

Where do you live?—In Island-bridge.

Where did you live upon the 23rd of July last?—In Island-bridge.

You keep a public house there?—I do, sir.

Do you recollect whether any one breakfasted at your house upon the 23rd of July?—I do.

It became a remarkable day afterwards?—Very much so, indeed.

Did you see the last witness who was upon the table?—I did.

Was he at your house?—He was.
Did he breakfast there?—He did.
How many were there?—Four in number.
Look at the prisoner, was he there?—He was one of the four.

Did he breakfast there that morning?—He did.

With Mac Cabe and two others?—Yes.

Did you know their names?—Only by hearing them since; Mac Cabe, the witness, and the prisoner Mr. Redmond.

Have you seen since the other two?—No.

But the witness and the prisoner, with the two others breakfasted at your house the morning of the 23rd of July?—They did.

Nason Browne cross-examined by Mr. Mac Nally.

You read the public papers sometimes?—Pretty often.

And the magazines?—Sometimes.

You read of the last rebellion?—I did.

Did you ever hear of the burning at Scullabogue?—I think I heard of such a thing.

Would you believe any man in this kingdom, saying that he never heard of such a thing?—Upon my word, I do not understand what you are saying.

Do you believe the sun is shining?—Yes.

Would you believe any man, who would swear it was not?—I would not.

Did you hear of the rebellion of 1798?—Yes.

You say you heard of that burning at Scullabogue?—Yes.

Would you believe that a man swore true, when he said, he never heard of the burning at Scullabogue?—I would suppose that every man swore true.

Elizabeth Browne sworn.—Examined by Mr. Townsend.

You are the wife of Mr. Browne, the last witness?—Yes.

Do you remember any persons having breakfasted at your house, on the morning of the 23rd of July last?—I do.

See if you know Mr. Redmond, who is upon trial?—I cannot say.

How many were in the party, who breakfasted in your house?—Four.

Did you see the witness Mac Cabe?—I did not take a particular notice of their faces. I was in the bar.

Did any other company of four people breakfast there that morning?—No, sir.

Did you observe any of these four go to any place behind the house?—I did.

How many of them?—Two of them.

What were they doing?—They were looking up and down the yard.

Was it in a careless or in an attentive manner?—I cannot tell.

At the time did it strike you as particular?—Two of them went at the front, and they parted.

[Not cross-examined.]

Thomas Morgan sworn.—Examined by Mr. Attorney General.

Where do you live?—At Island-bridge.

What is your occupation?—A fisherman.

How long have you been acquainted with the prisoner, Mr. Redmond?—Why, I believe four or five years back, going back a forward.

Is that the person at the bar?—It is.

Do you recollect meeting him any way upon the Quays, two or three days before the insurrection?—I do; I recollect one day almost seeing him, receiving money for coals, and going in my boat to Poolbeg.

How far do you live from the Army Barrack?—Not a quarter of a mile, and the end of the street.

Had you any conversation with the prisoner about those barracks, any time before the rebellion?—The conversation I had was upon a plank, going off in the boat with for the tide; he called to me and asked me where I was going; I told him, and I saw him again upon my return, and he asked me what luck I had in fish; he then began to speak—"That is a fine barrack you lived at 'Island Bridge'?" There are a great deal of men in it?" "I do not know," says I, "there are many, but as to the complement I do not know."

It seems he had a curiosity to know something about it?—I cannot say for that; only tell you what I heard him say.

When did you see him, after that?—I saw him at Island Bridge on the morning of the 23rd of July.

Do you know where *Nason Browne* lives?—I do, well; there are very few more, but I am there.

Did you happen to meet Mr. Redmond there that morning?—I did, sir.

Did he show any curiosity about the barrack, that morning?—Not to my knowledge; he did not.

Had you any conversation with him, when you saw him there?—There were a great many of the fishermen there. We generally go there to get our morning. He asked me for a salmon. I said, I had not one. He said, he wanted one for a customer of his; he would be injured if I did not get him one. There was one upon the hatch which had been sold, and Browne desired me to give it to the gentleman, if he gave more for it. I said I would not, but would get him one the course of the day, and I never saw any of him from that time till this day here.

Thomas Morgan cross-examined by Mr. Mac Nally.

You have known the prisoner four or five years?—I have; I might say more.

He is a very young man?—Yes; he used to come down with parties of pleasure in his boat.

Was he always a quiet well conducted man?—I never saw any thing else.

Did he ever attempt to swear you to become a rebel? Me! No such thing.

He had a conversation with you about a salmon, but he said nothing about a pike?—No.

He knew you were connected with a number of fishermen?—He did; he saw them.

He never made any attempt upon your loyalty?—He never did.

James Read, esq. sworn.—Examined by Mr. Attorney General.

Where do you reside?—At Carlingford; I am surveyor of that port.

Do you recollect having seen the prisoner Mr. Redmond before?—I do.

Where did you first see him?—I saw him first at sea, on board the Tarleton, of Wexford, James Murphy, master.

Upon what day?—The first of August. I was on duty in the bay, when I saw the brig and hailed her. They told me her name, and that she was in ballast from Dublin to Chester. I asked, had they any passengers?—They said, there were four upon the quarter deck. I thought they might be persons making their escape from Dublin, and desired the cockswain to lay me along side. I saw three passengers and the prisoner at the bar. I asked them if they had passports, as I had decided directions to take up all persons who had not. Captain Fleming and his wife, two of the passengers, showed me their passport. Mr. Peterson, another passenger showed me his. I asked the prisoner if he had one? He told me he had not. He said his pass was in his trunk, and that it was washed overboard at sea. I told him it was very odd, that he should have his pass in his trunk, while the rest of the gentlemen had theirs in their waistcoat pockets. I then asked him for any letter or paper to show who he was. He said, "He had none; he did not think it necessary to carry any thing but guineas, and he had a good many of them; he was going to Chester to buy coals."

Did he tell you when he sailed from Dublin?—I think he said it was the Friday before. I took him on Monday. They had bad weather, and were driven into Carlingford in distress. He said, they were very near being lost.

You then took him to Newry?—I took him on board the Glasgow man of war, where I got a serjeant and a party of marines, and brought him on shore.

Did he express any desire to write to any person?—He told me he would write to alderman Trevor, and was certain of a pass by return of post. He had a velice, which we examined; there was nothing in it but a waistcoat. We waited two posts for a passport, none came; but there came orders from government to bring him to Dublin, and I escorted him in a carriage to town.

Did you stop at Drogheda?—Idid. I gave him to general Archer, and stopped there. At

11 o'clock he desired me to stay in the town with the prisoner, and he also desired a serjeant and two Highlanders to stay up also.

Did the prisoner talk much upon public subjects?—Very much, till I stopped him.

What induced you to stop him?—I thought it was not proper before the guards; he talked of Buonaparté, and said he was a humane man. I asked him how he could say that, after massacring the Turks at Jaffa, and poisoning his own sick soldiers in the hospital? He made no answer, but asked me to argue with him like a philosopher. I brought him to Dublin, and gave him to major Sirr.

Did you stop any where between Drogheda and Dublin?—Yes; I breakfasted with the prisoner at the Man of War.

Did you stop any where else?—No.

Major Sirr sworn.—Examined by Mr. Mayne.

Were you at any house upon the Coal-quay some time ago, upon any business?—I was, on Tuesday after the insurrection, as well as I can remember the day.

Pray, how were you led to that house?—In the morning early, I received information of pikes being in the City coal-yard, and that I could see them from alderman Hutton's warehouse in Wine-tavern-street. I went there, and could see them. I brought a party into the yard, and found the pikes, a considerable number of them; they appeared as if they had been thrown over the wall into the yard. After taking them away, I was joined by the present lord mayor. Alderman Hutton, who assisted me, and who considered it would be well done to search in the neighbourhood.

Did you search farther?—In the alley leading from the coal-yard to the quay, I perceived a house shut up; the back door opened into a yard belonging to it, which led into the lane. I surrounded the house, and broke in the door from the lane, and entered the yard. There was a back house, or stable, with a loft over it, and had the appearance of carpenters being at work there; some carpenters tools were there.

Do you know Mac Cabe, who was examined here as a witness?—I do.

Did you ever see him at that house?—I did.

Did he point out any house there as the prisoner's house?—He did, that very place. In that stable or back house, were found some bayonets and swords under the shavings, and some pieces of timber as if for pike poles, but not rounded.

What length were they?—Ten feet. We went into the house; there were several yeomen with me.

Where did the front of the house open to?—There is a door opening into the entry; part of the passage is covered. The house, I think, is No. 14, on the Coal-quay. In the shop there were three beams lying on the floor; they were seemingly beams, large pieces of

timber. I observed some nails along the edge of the timber, and upon opening, found they were large cases containing pikes. There were either three or four of these cases; three certainly; they were formed so as to appear like beams of timber: they were made of the outside slabs of beams put together, so as to appear like beams; I considered them at first as solid timber.

Were there any goods or articles of trade in the shop?—No, these seemed to me to be the entire goods of the place.

How many pikes were there in each of these cases?—About forty.

Were they ready mounted?—Some of them were not, but most of them were.

Did you see any carpenter's tools there?—Yes, I saw planes and chisels, and such kind of things.

Did you see the prisoner Redmond shortly after?—He was brought a prisoner to my office in the Castle-yard, on the 6th of August.

By Mr. Read?—Yes.

Did you ask the prisoner any particular question?—I asked him where he lived.

Mr. Mac Nally.—Did you take it down in writing?—I did.

You have that paper?—I have.

You are a magistrate of the county of Dublin?—I am.

Did you examine him judicially?—I considered I was doing my duty as I thought.

Did you take it as an examination?—I did not take it as an examination; it is a mere memorandum of what he said.

Court.—Which do you prefer, to have the paper read, or the evidence to be given by the magistrate?

Mr. Attorney General.—The prisoner may have the paper read, if he requires it.

Mr. Mac Nally.—The best evidence should be given. Parol evidence is never preferred to written evidence. Lapse of memory and other things make the former fallible.

Mr. Mayne.—Is that paper in your own hand-writing?—It is.

Does it contain the account the prisoner gave of himself?—It does.

Read it?

Major Sirr then read the paper:—

"The prisoner said, he was in his house, No. 14, Coal-quay, upon Saturday night the 23rd of July,—and slept at home—says he breakfasted in his own house on the 23rd of July—did not breakfast with any one, or any where else—remained at home that morning till ten or twelve o'clock, and then went to George's-quay, and was on board the Derwent, captain Woodward, master—sailed on Friday in the Tarleton, bound for Chester—put into Newry in stress of weather, and was made prisoner for not having a pass—that his trunk was washed overboard—mentions he set his house to one Costigan, who was to set up in the grocery business—he gave him five guineas earnest, and was to give 100*l.* fine, and forty guineas

a year: leases were not concluded, nor he know where Costigan was, nor his Christian name—that his sister was married to one Mr. Hatchell—that says Redmond is not a relation—was not at house when the disturbance took place Thomas-street—thinks he dined at Ship-street on the 23rd—no person present when Costigan took the house—Costigan said he lived at Ringwood—wished to live in Dublin. Browne McCabe being brought into the presence of the prisoner, both declared he breakfasted at Island bridge; prisoner acknowledged breakfasted with Mac Cabe at Island bridge."

That paper does not contain a declaration made by the prisoner, but is rather a statement of what passed?—Yes.

Then you did bring Mac Cabe and Browne into his presence?—Yes.

And upon their appearing he acknowledged he breakfasted at Island-bridge?—He did.

He said, he slept at his own house, No. 14, Coal-quay, on the night of the 23rd of July.—He did.

Major Sirr cross-examined by Mr. Campbell.

You said, that it was in consequence of information given by a yeoman that you went and found these things?—It was.

Mr. Campbell.—I will not trouble you with any farther question.

Court.—Did the prisoner mention any person from whom he had received a pass?—No, my lord, he did not.

Andrew Whelan sworn.—Examined by Mr. Townsend.

You are one of the attendants of the prison of Newgate?—Yes, sir.

Look at Mr. Redmond, the prisoner—do you know him; I attended him.

Did you, during your attendance, see him write any thing?—I did see him write at a table.

Not long since?—At different times.

Did he give you any part of his writing?—He did.

How long ago?—About a fortnight.

Did you hear him say any thing about it?—No, not distinctly; the sheriff came to the prison and spoke to some other man, and then sent for me; just at that time he gave me the writing.

You say, you got a paper a fortnight since?—I did.

Did the prisoner say any thing about it?—He asked me afterwards what I did with it. I told him it was safe, it was burned.

What did he say about it?—He said he wished it was in print.

To whom did you give it?—To Dr. Archer.

How soon?—In ten minutes.

Did you give him the same paper which the prisoner gave you?—I did all I got.

Andrew Whelan cross-examined by Mr. *Mac Nally*.

You attend in the gaol?—I do.

What is your occupation?—Superintending prisoners under the directions of the physicians and surgeons.

Did you sleep in the room with the prisoner?—Yes.

Did you not take the paper from under his bed?—No, he gave it into my hands.

Did you ever see him before he was a prisoner?—No.

Were you placed in the room to watch him?—Yes.

How long had you been in the room with him?—A month last Monday.

How many nights had you been in the room before he gave you the paper?—About fourteen.

Then I suppose he had formed a confidence of you, that he gave it to you; did he desire you to print it?—No.

What was it you said about printing?—He said, he wished it was in print, but not at the same time when he gave it to me.

When was it he said that?—When he was writing it, the evening before. He gave it suddenly to me, the next morning.

Did you not think it extraordinary, he should give it you?—As I was about him, he thought I would not damnify any thing.

Or betray him?—I do not doubt but he thought so.

Were there not three other persons in the room?—Two mostly.

Were there not three every night?—For three weeks back.

Who was in the room when he gave the paper to you?—No one, but Fox, who was called down to be examined, and I was left in the room.

Court.—To be examined about what?—To be asked about the prisoner writing; there was some information about the prisoner's writing, and the sheriff threatened to send Fox to the Prevot, if he did not tell the truth.

Mr. *Mac Nally*.—Was there an examination every morning?—No.

Was there any thing said when he was deranged?—He was deranged for some time.

Was he not beside himself when he trusted you with the paper?—I have no reason to think so.

Was he in his senses, when he gave you the paper?—I think he was.

Did you read it?—No.

Then you do not know, whether it is the raving of a madman, or the writing of a man in his senses?—I cannot tell, for I had it not in my possession many minutes; I had been ordered to keep any paper I found, for the keeper of the prison.

Was not the prisoner prohibited from pen, ink and paper?—He was ordered them by government.

Was he not deprived of them afterwards?—He was.

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He gave you a letter?—No, it was no letter; it was neither folded nor sealed.

Was he in an ill state of health?—He was in an ill state, but out of danger.

Court.—You say you saw him write at a table, and that he said he wished it was printed; how can you swear that was the same paper he gave you?—I do not say that; but I say, that the same paper he gave me, I gave to Mr. Archer.

How long after the conversation about the printing, did he give you the paper?—The next morning.

Mr. *Attorney General*.—Your lordships will see from the paper, which we offer in evidence, that it was intended for printing—it is paged, and the prisoner contrived to make away with thirteen pages; the work begins with the 14th page when we got it.

The Rev. *Foster Archer* sworn.—Examined by Mr. *Attorney General*.

Have you seen that paper before? [producing a paper to the witness].—I have.

Who gave it to you?—Andrew Whelan, the last witness.

You are a clergyman and inspector of the gaol?—Yes.

Mr. *Mac Nally*.—I shall not trouble the Court, if they have made up their minds upon the objection which I offered. I have felt the distinction which was taken between papers delivered by the prisoner himself, and papers taken by fraud or force, from him. I made the objection upon the first ground.

[Extracts from the proclamations were then read, as in the former cases. Vide Kearney's case, page 723.]

An extract was read from the paper given by the prisoner to Andrew Whelan, and identified by Mr. Archer: "Who knows yet but the day may shortly arrive, when we may find in some measure fulfilled the words of the Scripture, 'An eye for an eye, a leg for a leg, an arm for an arm?' I trust in God, that in the hour of danger, that you will show yourselves Irishmen, fighting for your long lost liberty. I beg, dear countrymen, that feeling and understanding your interests, you will be gentle as lambs and watchful as lions; but above all be united. Be mindful, how you commit yourselves to any one you don't know—do not put yourselves in the power of any one but those you know, and who have the best characters; but particularly, do not place confidence in the acquaintance of any man, when life and death is depending. When any favourable opportunity occurs, which may shortly be the case, I beg you will not do, as heretofore—take up arms to lay them down again like a blast of wind, and then be taken prisoners, and hanged like dogs."

[Case closed on behalf of the Crown.]

DEFENCE.

Mr. Mac Nally.—My Lords and Gentlemen of the Jury; the *attorney general* commenced his address on opening this cause, with telling you, that you ought not to advert to the former verdicts of conviction, by other juries, although they gave the highest satisfaction to the public and the justice of the country. Gentlemen, when I cite the position of that learned gentleman, I do not pretend to cite his words, but the substance of what he said. Two of those verdicts, as he may remember, were verdicts of acquittal—and I trust, this will be the third, because it is not your duty as jurors to be vindictive. Neither is it your duty to advert to any verdict whatsoever; and even if you could do so, it would be your duty, not to permit such verdict to have the slightest influence upon your minds, unless you had the whole of the evidence before you upon oath, which the former jury had received and decided upon; and then your decision would be founded, not upon the former verdict, but upon the evidence.—Gentlemen, if you had now in evidence before you, the facts upon which former juries found their verdict, it would be beneficial to my client; for you would be able from that evidence to discover such a decided difference between those cases already tried, and the case of the prisoner now at the bar, as would most probably, and I trust, in the event will, entitle him to a verdict of acquittal. I rest my presumption of acquittal on this fact—that in those former cases, there was evidence given of horrid atrocities, atrocities of a peculiar, and desperate and sanguinary nature;—evidence of individual murders was given and stood uncontroverted. In some of the cases, more than three murders were proved; but in this case, no evidence of any particular murder by the prisoner, has been attempted to be offered—and for the best reason—because no such evidence can be offered. If the counsel for the Crown had such a proof to lay before you, they would have done so. Then upon this trial, the only one in which no murder is brought forward in accusation—no murder has been proved. Who is the witness who has been examined to convict the prisoner? Let us suppose for a moment, that the whole of this case depended upon what Mac Cabe swore. Let us strip it of all collateral circumstances; and if we do, I think the Court will support me in saying this,—that on his testimony, even if it deserved credit, nothing more than a misprision of treason has been proved against the prisoner at the bar. I say, upon his individual testimony, no more has been proved. He has shown a meeting—a consultation between the prisoner and Allen and two others—but still, confining myself to his testimony—

Court.—There has been evidence of a consultation and conspiracy.

Mr. Mac Nally.—My Lords, that only goes to show, that there was in contemplation some-

thing to be done; but there is no satisfactory proof of what was to be done; and there is no such proof that the prisoner did any thing whatever in furtherance of whatever that consultation was about. The witness has said that he and three other men met for a particular purpose. But the law is,—I speak on the correction of the Court—that there must not only be a consultation, but an overt act that is, an open deed done, in order to convict the prisoner. If A. B. and C. meet, to have a consultation for any purpose, however wicked—if they did not consent to carry out the object of their consultation into execution—for not only a consultation, but the treasonable purpose of the consultation must be proved to make the consultation an overt act of treason. My position is that bare consultation without express assent amounts to no more than misprision of treason. The overt act laid here is, that the prisoner conspired with others to levy war. As to the other facts, I throw them out of the case; the evidence given applies to them, and you, gentlemen of the jury, will reject the recollection of them; they amount to no more than that he left his house with intent to do so, which were thrown in, I suppose, to fill up the parchment, without being material of any other use whatsoever.

With great submission to the opinion of the Court, I did venture to say, that you gentlemen, are not to receive as true, every thing which appears to have been said by the prisoner. If ever a witness came in a questionable shape, it is this man whose evidence you have heard, and on which it is my duty to serve.—It is oppressive for me to say, and to the Court and to you to hear, what my position as an advocate obliges me to urge after day, treading over the same beaten ground: the mind becomes weary and languid in stating repeatedly what it is right to say—and argument becomes uninteresting to the hearers from the same cause.

I ask you in what light does the witness appear? He is by his own confession an accomplice—an actor in the most foul and criminal scenes. Why does the law say, an accomplice is a competent witness?—It is because every man who believes in the existence of a God, and future rewards and punishments, is competent, unless convicted of an infamous crime. The competency of such a witness, stigmatised as he is, is a point never contested. The judges will do me the credit to say that. But is he not a person, whose evidence is to be received and to go to a verdict, accompanied by the strictest caution, weighed as his credit is by his own confession of crimes? I will admit more; admitting what fell from the bench, I do admit it has been ruled—that if the jury give credit to an accomplice, they may convict upon his own testimony;—a case was referred to in support of that doctrine, and the point is reported to have been determined by twelve English

judges. But what was that case? It was the case of one single individual act of atrocity, committed by the prisoner in company with the accomplice who turned approver. He swore to the fact of stopping a chaise, and the robbery, and he described the goods taken from the party by the robbers. The goods taken were produced in court, and sworn to by the owner as the property he had lost. The accomplice appeared unimpeached, save as to this single act of robbery. But how does the witness in this case appear? He was sworn in the last rebellion to act as a traitor. He has told you he considers it an honest and a fair thing, to kill the king's subjects in open war, and rob them of their property. In his judgment, when rebellion rages, killing the loyal subjects of the crown is no murder. You heard him endeavouring to level all distinctions between war and rebellion; between honourable conflict and abominable assassination—contriving an apology for the man who broke his allegiance, and conspired to murder his fellow-subjects—a conspiracy, which in itself includes every atrocity,—murder, rape, robbery, burning of houses, massacres,—not of individuals—but as we all know of whole bodies of people. Would you, gentlemen, believe that witness was swearing truly, when he told you, that he never heard of what happened at Scullabogue?—I suppose he never read of the horrors of Wexford-bridge, or the number of men who were tried, and who were executed as the perpetrators of those atrocities. I am to presume, he never read a magazine or a newspaper; or that accurate, candid, and eloquent work of sir Richard Musgrave; or, not to speak ironically, the history of Mr. Gordon; nor even looked to the other side of sanguinary details, the compilation given by Mr. Hay, who confesses and states the massacre at Scullabogue. The witness was a United Irishman since 1798, and being such he must have known how the country was organized; he must know the purpose of the conspiracy, because it appeared publicly in the examination before the two Houses of Parliament, and yet, denying all knowledge of these transactions, he would have you believe, that every thing he has sworn is true and just, he would have you give credence to every thing but what impeaches his credit. Can you believe such a witness? Can you for a moment hesitate in saying, he deserves no credit? Permit me to recommend, that before you bring in a verdict against the unfortunate gentleman at the bar, who is not twenty-three years of age, you should ask yourselves this question,—Would you believe, that an old United Irishman was seduced into the rebellion of 1803, or was not rather the deceiver and the fiend who first seduced these betrayed, accused and abandoned? Has he not acknowledged, that he never confessed his own infamy, till he was taken up, and in custody?—that he gave information when in duress,

—and is he not stigmatized, and rendered infamous and undeserving credit, out of his own mouth, when he swears he has no hope of impunity, nor knows what will become of him; knows not whether his life will be pardoned, or be handed over to that execution which his acknowledged crimes deserve? Surely in that particular he swears false; he swears false, because he must know, that the present government have acted under sentiments so humane and so benign, even to the enemies of the state, that mercy will be extended even to him, though he is not deserving their clemency. When he pretends he has no ideas of that kind, no hope of pardon fluttering about his heart, no self-interest or love of life influencing his testimony you must suspect him to be false, and, finding him so in one fact, that vitiates every thing he said, which attaches to the prisoner at the bar.

Gentlemen, it is a rule in civil and criminal cases, that where there is an immediate interest, the mouth of the witness is closed. If it be a case of forgery, the party who is to lose by the instrument, if it be genuine, cannot be examined. What is the interest here?—the life of the witness:—His life is endangered by his crimes;—is not that an immediate interest beyond all pecuniary consideration? but what has he confessed? He declared he had no objection to be concerned in the rebellion! He who enlisted under its banners, and though—not a leader, was actively employed in a subordinate situation—you heard him declare audaciously and wickedly, he did not consider it murder to put the king's subjects to death in battle; would he dare to declare this if not certain of pardon? he is a man who finds it necessary to save his own life by the sacrifice of another; has he not an interest, an invaluable interest in doing so? self-preservation, the first law of nature, is his guide; look to his credit upon this ground! and ask yourselves, does he deserve credit? the answer must be, he does not.

It is probable he never took the oath of allegiance; it makes no difference whether he did or not; every man is born under a solemn obligation to show allegiance to the crown: the duty of allegiance does not depend on the oath prescribed by law: it is founded in the relation every person stands in to the crown, and in the rights and privileges, the immunities and the protection, he derives from that relation; it is inculcated by his religion, "Fear God, honour the king:" a man is bound to the government of his country by every social tie; for the protection he receives from government he owes allegiance and support; he owes that allegiance to the crown, which is the head of that society, whereof he is born a member. The rights he derives are born with him, they are indefeasible and perpetual, and so his allegiance is unalienable and perpetual. The witness broke through that moral and political obligation; but still more, he has trampled upon the divine code; the

law of God says, "Thou shalt do no murder;" no man is sworn to keep that commandment, and yet if he commit murder, he is as guilty of a moral perjury, as if he were sworn upon the Gospels of Christ, not to commit it: when God said, "Thou shalt not bear false witness against thy neighbour," the man who tells a lie to the injury of the life, of the character, or of the property of another, is as guilty of perjury, as if he were sworn to keep that commandment; and therefore I deduce this position, that this man, though he never took the oath of allegiance, was as much perjured when he took the oath of a United Irishman, as if he had been sworn never to take it.

I do not impute perjury to him for betraying his party, but I see no merit attached to him by so doing; if he acted from humanity, or a respect for society, he might have some merit with you; but he did not act from either of those motives; he was in prison, and his life was in danger, before he seceded from and betrayed his party; his treachery was not the result of repentance, but of mean and base cowardice.

I advert now to two circumstances; one is an act of parliament, the other a principle of justice. The statute 3 Ed. 1st, speaking of approvers (and I wish those who have the care of gaols would attend to it), says, "If a man be imprisoned, and the gaoler by duress of imprisonment, shall extort from him any confession, or any evidence against another, for the purpose of becoming a witness against that other, he shall be guilty of felony:"—How does that apply here? The principle of the law goes to every man obtaining such evidence by such means. Every man does not incur a felony, because he is not within the strict letter of the statute; but he incurs a censure, because he is within the principle of the law; and lord Coke says, "it is not lawful to induce, or excite any man, even to the just accusation of another, much less by duress of imprisonment, and least of all by a gaoler to whom the prisoner is committed for safe custody;"—These words have been adopted by sir William Blackstone, in the ablest manner, and he has been followed by that great jurist, lord Mansfield, whose expressions I will read: Speaking of approvers in the case of Mrs. Rudd*, he says, "no doubt, if it was not absolutely necessary for the execution of the law, against notorious offenders, that accomplices should be received as witnesses, the practice is liable to many objections. And though accomplices are competent witnesses, their single testimony alone is seldom of sufficient weight with a jury, to convict the offenders; it being so strong a temptation to a man to commit perjury, if, by accusing another, he can escape himself." These are the words of lord Mansfield; they have been adopted, and I have often heard the same sentiments, from the

judges who are this day presiding, though I hope not in the same precise words. I, you, gentlemen, does not this legal doctrine apply to the witness? Does it not apply to your own conscience, and tell you he deserves no credit, in a case where his own life is at reward, and in case the prisoner be convicted?

Now, gentlemen, it is certainly true, that the witness in this case, does not stand convicted upon record: he only stands implicated on his own confession of his own crime. If he were convicted, he would not have opened his mouth, his lips would have been closed as a witness; and therefore, he is standing before you as a culprit. For, in this case, you have two men to try; you have first the witness to try, in order to see whether he deserves credit; if he does not, you convict him as a perjured man, and leave his punishment to another tribunal; but he stands convicted on record in your consciences, the finger of God hath written his conviction in your hearts, and, by the same almighty finger, and on the same hearts is written, the acquittal of the young man at the bar, because, if you count the witness of perjury, you cannot count the prisoner as meriting conviction on a fact he has sworn to.

Gentlemen, I am to state, as part of this young man's case, that, as to the facts sworn against him, he has no witness to produce; and I do know, it has been argued, on several occasions, that the non-production of witnesses is a kind of negative evidence tending to convict the prisoner. But upon principles of law I deny the validity of the argument. It was not until very lately, indeed, that witnesses were allowed to be examined for the prisoner, and even much later were his witnesses allowed to be sworn; because, as a great jurist expresses it, the evidence against him ought to be so conclusively impressed upon the mind of the jury, that there should be no doubt of his guilt. That is lord Coke's excuse for his practice, and I adopt it here, because the prisoner stands accused by the single testimony of an accomplice, whose inventions and perjuries he could not be prepared to answer. There are other witnesses I admit, and I shall make one or two observations upon what has fallen from some of them. Brand said, that the prisoner breakfasted at this house upon the 23rd of July. Mrs. Brand was brought to say, what? Why to say, she knew nothing of the matter. Then Mrs. Morgan, the fisherman; and his evidence is material for the prisoner. The latter asked him, what luck he had in fish, and something was said about the barrack. What kind of character was Morgan? We have had the clothes men, bakers, and tailors, in the provisional government; was not a fisherman likely to be picked up as any other character? he knew the prisoner from his youth, and was seen by him every day and week, and notwithstanding that intimacy there was no attempt to engage this man in this case.

not that general negative evidence to show this—that, if the prisoner were a conspirator, he would not have lost such an opportunity of making another conspirator; he would have made an attempt upon the fisherman and the crew who attended him in the bay; but there is no evidence to show that he made the slightest attempt of that nature.

It has been stated by major Sirt, that he went to a house upon the Coal Quay; you will determine whether that was the prisoner's house, but supposing the major's evidence went no farther, then I would tell you, that you could give no credit to it. Let it not be supposed, that I am controverting his account of what he saw, or his relation of what Mac Cabe told him:—I do not. Pikes and other implements were found;—that is proved:—but when was that? The prisoner had not lain at home on the night of the 23rd of July. The paper which hath been produced, is evidence for the prisoner, being offered by the crown. You are to take the whole of it into your consideration. The prisoner was at home in the morning, but was he at home when those implements were delivered at his house? Having left his house, the presumption is, that they were deposited there in his absence. When Mac Cabe and his associates got possession of the adjoining houses, they opened a communication for carpenters to work, in forming these machines that have been described.

Gentlemen, I do not controvert, that the prisoner fled, that is, that he went on board a ship; but it is a remarkable circumstance, that he never changed his name. And why did he fly? Because it might probably be true, that he was at Browne's in the morning of the 23rd of July, and might have heard more in the course of the day which might render it necessary for him to avoid being apprehended for that, which I call a misprision of treason. But, even if you were satisfied of that, it would not authorize a conviction upon the indictment. Flight is a fault,—but innocent men may fly from fear;—may fly, to avoid imprisonment or suspicion.

Gentlemen, I have taken up too much of your time, and I thank you and the Court for the indulgence I have experienced. I have only to add, that the young man at the bar is of a respectable family, that he was early in life bound to a hatter; he afterwards, when he came of age, commenced coal-merchant; and, gentlemen, in order farther to weaken the testimony of the approver, I will produce a contrast to it,—a character which is not impeached;—and then I will leave it to you, which is most probable, whether a virtuous young man and a good son is better entitled to your verdict of acquittal, as an innocent man, than the approver, self-impeached as he is, by his own testimony, of being guilty of such enormous crimes, as perhaps the history of the enormities of mankind, collected together, can scarcely produce. Therefore, gen-

tlemen, you will give full credit to the character of my client, who is upon his trial for his life, and you will discredit the witness, who, to save his own life, comes to seek this young man's blood.

James Cruise sworn.—Examined by Mr. Campbell.

Where do you live?—In Parliament-street.

What business do you follow?—A hatter.

How long have you followed that business?—Twenty years.

Do you know the prisoner?—I do.

How long?—He served his time to me.

You had of course, full opportunity of knowing his general character, and conduct. What was his general character for honesty and propriety of conduct?—I always thought him faithful industrious and honest, as much as apprentices generally are.

James Cruise cross-examined by Mr. Attorney General.

Do you know any thing of the prisoner's character for loyalty?—No, I never heard it questioned.

How long is it since he left you?—It is between two or three years since he lived with me.

Mr. Campbell.—Have you known his character since?—I have not known much of him since. I met him in the street and used to speak to him. I always considered him a very proper young man.

William Clarke sworn.—Examined by Mr. Campbell.

What business do you follow?—A plumber,

How long do you know the prisoner?—Since he was fourteen.

What has been his general conduct and character, since you have known him?—From the time I knew him, I never heard any thing of him, but that he was a quiet and peaceable man in the neighbourhood.

William Clarke cross-examined by Mr. Mayne.

You are a very old acquaintance of the prisoner?—I served my time in the neighbourhood, where he was born.

You knew nothing of his politics?—Nothing in the world.

Where did he live at the time of the bonfire on the 14th of July, upon the Coal Quay?—I cannot say.

Was it opposite to his door?—There had been different fires; I saw a fire upon the 13th, and another upon the 14th of July.

Mr. Mayne.—I shall not trouble you.

Witness.—I was rather confined by the gout.

William Grimshaw sworn.—Examined by Mr. Campbell.

Where do you live?—On the Merchant's Quay.

What business do you follow?—A calico-merchant.

How long have you known the prisoner?—Part of two years; I have had an opportunity of being acquainted with his character almost two years. I first saw him with a Mr. Ryan of Limerick.

From what you have known of his character and conduct, what has it been for propriety and honesty?—He was recommended very highly to us for honesty and industry, and he chose goods at our place, for Mr. Ryan, and we bought coals for him at the Coal Quay. I always thought him an honest and proper man.

You never heard of his character for loyalty being impeached?—No.

William Grimshaw cross-examined by
Mr. Townsend.

You know nothing about his politics?—No, nothing; only he was recommended to us as an industrious young man, to do business sometimes at our house.

Daniel Egan sworn.—Examined by
Mr. Mac Nally.

Where do you live?—At No. 12 Coal Quay. What business do you follow?—A shoemaker.

Have you known the prisoner?—I have.

How long?—Eight or nine years.

Are you acquainted with his general character?—I never heard any thing bad of him.

Did you ever hear a bad political character of him?—No, not previous to the 23rd of July.

Daniel Egan cross-examined by
Mr. Attorney General.

Did you ever converse with him upon political subjects?—Never.

[Case closed on behalf of the Prisoner.]

Mr. Attorney General said, he would not trouble the Court with any observations upon the evidence.

SUMMING UP.

Mr. Baron George.—Gentlemen of the Jury;—The prisoner, Denis Lambert Redmond, is indicted for two species of treason; first, for compassing and imagining the death of the king, and secondly, for levying war for the purpose of overthrowing the government of the country.

Gentlemen, to maintain this charge against him, it is necessary that some of the overt acts laid in the indictment in support of one or other of these species of treason, should be fully proved to your satisfaction. I shall point your attention to the several overt acts, and it will be for you to consider, whether any of them have been proved to your satisfaction, by the evidence which you have heard.

[The learned judge stated the overt acts in the indictment, and then summed up the evidence. After stating the testimony of Wilson, Coulthman, Rice, and Douglas, he observed]

The evidence of these witnesses only establishes the allegation, that war was levied for the purpose of overthrowing the king's government. The rest of the case was most peculiarly fit for the consideration of the jury, which you, gentlemen, will direct your attention, to see whether the prisoner took a part in that conspiracy, and committed any of those facts which are stated in the indictment. As to them, the first witness examined was Patrick Mac Cabe.

[The learned judge here stated the remainder of the evidence.]

Gentlemen, upon this evidence, you are to consider, whether any of these overt acts have been fully proved or not,—whether the prisoner did enter into the conspiracy, for the overthrow of the government,—whether the several pikes to be made, and concealed for that purpose, for the evidence is directly to these charges, if you believe, and these are the important overt acts, which you will particularly direct your attention. The prisoner is expressly charged with having entered into this conspiracy, by the testimony of Mac Cabe; and if you believe what he has said, supported, as it is, by the evidence, it will go clearly to prove the act of the conspiracy.

Gentlemen, the exceptions which have been taken to the credit of Mac Cabe have been dwelt upon by the counsel for the prisoner, and it is a great satisfaction to the judge presiding at the trial of this nature, that the accused is assisted by counsel, who urge every point that is beneficial to the man upon his trial. There is no doubt, that a person who confesses, that he himself was guilty of taking a flagrant and treasonable oath in the year 1798, and confessing also, that he entered into a treasonous conspiracy upon this rebellion in 1798, that he was armed with a blunderbuss against his fellow subjects, to carry on that rebellion by bloodshed and murder; undoubtedly, these facts must greatly impeach the credit of the man, and you, gentlemen, have to determine, whether he has told a falsehood or not, whether his account appears supported or not, corroborated by collateral circumstances, or other proofs in the case, so as to bind you to assent to the truth of his allegations. In this case, though a jury might convict upon the testimony of Mac Cabe, even though there were no other witness, yet it would require great caution and consideration, before it would convict a man of a crime of this nature upon the uncorroborated testimony of a single witness, appearing in such a light as the present witness. But, if he be supported by other facts, showing that what he said is true, you are bound to find a verdict according to the truth.

The facts in confirmation of his testimony appear to be these: the witness states, that after the conversation which was held in the morning, in the neighbourhood of 1800,

Bridge, they went to that very place, where one of the attacks was to be made, and they breakfasted at a house near the bridge. He is so far corroborated by Browne, who says, that four persons breakfasted there that morning, and that the prisoner was one of the party, and Mac Cabe another; so that Mac Cabe and the prisoner, and two others are proved, if you believe the evidence, to have breakfasted there that morning. Mac Cabe has told you the business upon which they collected there, and no other business is suggested by the prisoner. A farther circumstance of corroboration is this: Mac Cabe was an utter stranger, before that time, to the prisoner; he told you, that the prisoner spoke to a fisherman who is produced, and shows by his testimony, that such a transaction passed: and he states, that the prisoner had before that, asked him concerning that fine barrack which was in his neighbourhood, and how many men it contained. These circumstances are of some weight, and should not be rejected. You will determine what force they should have. Mac Cabe swore, that he returned to Dublin with the prisoner, and was to have gone to his house with him; but the prisoner being stopped by some acquaintances, the witness went forward to that house, which he afterwards showed to major Sirr, to be No. 14, on the Coal-quay, and there he saw two carpenters at work rounding poles, of which there were about twenty. But the prisoner not returning, the witness did not wait. This was the very morning of the 23rd of July; and see, whether in this allegation, he is supported or not. It appears, that in two or three days after, some pikes had been thrown into the city coal-yard. The prisoner's house was locked up, so as to render it necessary to break open the door; there appeared within, shavings and benches, and carpenters tools, and such a number of pikes as must have taken a considerable time and ingenuity to finish, because there were not only pikes lying out, but there were many concealed in cases, in such a manner as to pass for pieces of timber, and all these were found in that very place, where the witness said, he saw the carpenters at work.

You will determine, whether these works were carried on with the privacy and consent, or without the knowledge of the prisoner. The very best man is liable to have weapons concealed in his house, by servants, or other persons in his employment. But you will judge, whether all these things could have happened, and these works have been carried on without the knowledge, privacy, or consent, of the proprietor of the house.

There is another circumstance tending greatly to corroborate the testimony of Mac Cabe, if you believe the evidence of Mr. Read; that is, the flight of the prisoner, after the rebellious attempt was defeated; because, if you believe, that he was flying, in order to get into another kingdom, without a passport, and

that he told those falsehoods as they now appear by the testimony of a witness to whose credit no exception lies;—ask yourselves, why the prisoner said he breakfasted at his own house, and that he did not go out till after twelve, but afterwards, when Mac Cabe and Browne are produced to him, he immediately admits the statement of Mac Cabe, and by that very circumstance does confessedly bring himself into company with Mac Cabe. You, gentlemen, will consider, whether the prisoner joined with the conspirators, or procured pikes, for the purpose of rebellion, or kept them for that purpose. If, under all these circumstances, you have a reasonable doubt upon your minds, with regard to the guilt of the prisoner, such a doubt as men with safe consciences may entertain, you should acquit him. If you have no doubt, and are convinced that Mac Cabe's account is true, and that the prisoner acted in the manner which has appeared, you ought to convict him.

The jury retired for five minutes, and returned a verdict of GUILTY.

Mr. Attorney General prayed judgment of the court.

The indictment was read, and the prisoner was asked, what he had to say, why judgment should not be passed.

Prisoner.—Judging from the awful situation in which I stand, I beg to address a few words to the court—merely as far as concerns the evidence against me.—First, as to that of Mac Cabe, and what passed at Island-bridge, I am convinced, he in some degree exaggerated. As to his going to my house, and seeing pikes there, I disavow it. There were no pikes there, nor had I any communication with him, prior to the morning of the 23rd of July. As to his testimony upon that part, I must confess it is constituted of perjury of the blackest dye. As to major Sirr's evidence, the conversation I had relative to my situation upon the morning of the 23rd, and the answer I made, I did not recollect where I breakfasted; on recollection afterwards, when I saw Mac Cabe, I stated, I did breakfast at Island-bridge, which actually was the case. I will not attempt to mention what transpired between us,—I believe all the answers read by major Sirr from the paper, were actually the case. As to the evidence of Mr. Read, as far as concerns the conversation between us, upon the subject relative to the character of Buonaparté, I confess he was the first person who introduced it,—he first drank the health of the king—I drank it—I then gave the health of general Buonaparté, and he censured it, and spoke hardly of the character of Buonaparté, which I defended alleging, I had a right to do so, as I had read in the public papers, that several respectable persons were taken into custody in London and punished for daring to impute any thing to the character of that great man. I do not now hesitate

to tell the Court, though the halter is around my neck, and the axe ready to sever my head from my body, that I was placed in an official situation, acting under the Provisional Government. I acted with that energy which would promote its welfare, as I thought. I acted according to the dictates of my own mind and principles. I will acknowledge, that its completion and success was the full amount of my wishes. Had any of my proceedings relative to the 23rd, been brought forward, I should feel myself highly —

[Here the prisoner became so agitated, he could not speak for some time. After a pause of some minutes, he added]

The situation of my mind will not permit me to say any thing more—I submit to the sentence.

Mr. Baron George.—If you wish to say any thing more, that may ease your mind, we will wait as long as you please.

Prisoner.—I have nothing more, but after I am sent to the cell, that no visitors shall be allowed to see me. Let no strangers be admitted from curiosity, I wish to have a chair.

Mr. Attorney General.—I gave directions that the prisoners should be furnished with chairs and tables.

Prisoner.—I have been denied the use of pen, ink, and paper, I trust I may be permitted to write a few letters to my friends.

Mr. Baron George.—We shall give directions as you desire.

Prisoner.—I will say this much, that I saw no pikes in my house, nor were any made there.

Mr. Baron George.—Denis Lambert Redmond! The crime of high treason, for which you have been tried, has been established against you by evidence the most satisfactory. Indeed, your own declaration at this moment shows, that you were guilty of the offence of which you stand convicted. You have admitted, that you were in the employ of the *Provisional Government*, having thrown down the allegiance which you owed to your king and country. It is truly lamentable, that before you entered on an enterprise so destructive and so daring, you did not reflect a little on the consequence; that you did not take into consideration all the horrid crimes, which must have been committed, before your hopes could possibly be realized; crimes of all others the most odious in the sight of God, and of God's creatures. Nor think, that you can make any distinction favourable to yourself in the division of offence—for every crime committed on the dreadful night of the 23rd of July last, must be upon the heads of the *Provisional Government*, whoever they are, and upon the heads of those agents, who entered into their wicked service. And could any thing more clearly show the anger of Providence, than the circumstances attending your escape from justice, and your apprehension? You embarked in a vessel to leave the coun-

try, but he, whom the winds and seas forbade your flight, and brought you back to those shores, where your crime was committed, and where atonement was due. Is there ever a case since the beginning of world, wherein the interference of Divine providence was more palpable?—What was the design of the *Provisional Government*? To declare Ireland an independent republic, and sever it from Great Britain. If indeed sincerely entertained such a notion, they are fools, and entirely insensible to the culties and disadvantages of such a step. Surely there is no man of common understanding, and at all acquainted with the essence of the British constitution, who does not know it far surpasses any republic, in its simple form of government in the world. Every man, who asserts the reverse, has been again and again refuted fifty times over; and any man with a knowledge of history, who has had a liberal education, who appears not to have been your good friend, would never compare the British constitution with that of any other country. But in monstrous ignorance and infatuation, he possesses the man who is able to read a newspaper and could believe, that Ireland, separated from England, could retain her independence? If once severed from that island, freedom, and that race of freemen, must not of necessity become subjugated to the most abandoned and abject slavery that has disgraced the human form? In Turkey, or any of the eastern countries, where we find slaves so degraded as in France: but could any but madmen for a single moment entertain the project of relinquishing British freedom and British connexion, for so vile a hard a destiny? Could the practicability of such a measure have seriously entered the heads of any set of men, how could they have abandoned themselves to the base election of their country to the miserable fate, of separating from the freest and happiest people that ever illuminated the dignity of human nature, and to connect themselves with slaves of a Corsican usurper? How could reason so err? But though you could have been that proud and honourable connection with I trust in God, will continue indissoluble: men, and nations, and time, shall be no more—see what dreadful means you must have used—what arrogance in design—what contempt is made by argument, to convince reason and induce the co-operation of our countrymen, but a number of mortal weapons is secretly hoarded up,—blood is the thing in the contemplation of your purpose the rabble of the country are invited to take arms, and to fall with savage rage upon the civilized, informed, and virtuous part of society. Was ever such wickedness—so abandoned and sanguinary wickedness known? How could freedom, or any principle conducive to the happiness of man spring out

such means? Had your schemes been even formed by wisdom, and calculated for the most salutary operation on the happiness and prosperity of your country, what right has any man to arm himself against the life of his fellow-citizen, because the latter prefers to live under an established and rational government, dispersing blessings to him, and to his fellow-subjects? What unaccountable arrogance, cruelty, and injustice in the individual; and what unspeakable calamity to the public, if every visionary in politics is to start up at pleasure, and prescribe his form of government by force of arms? Was any thing ever heard so horribly revolting to the feelings of humanity, and the dictates of reason? Whatever your education may have been, your own reason must have shown you, that the vengeance of God must be particularly denounced against conspiracy, because of the magnitude of those crimes it necessarily embraces. You must have counted on thousands of murders, before you could have effected your purpose and the most dreadful massacres, the most indiscriminate havoc of their quiet and unoffending countrymen, must have been consequences familiar to the minds of those who could form a plan of this kind.

Young man! You have now been a long time in gaol; you have had much time for reflection during the period you have been in the hands of the law; many unhappy victims have fallen beneath its justice. You have heard them going out to execution with the general consent of the public—not a popular egret attending their fate; but reason, virtue, and religion, deriving confidence and security from their punishment. You witnessed all those examples, passing under your eyes; the voice of justice vindicating the happiness of society, was every moment reaching your ears; yet only think, young man! how wrongly you have conducted yourself. The law allowed you pens, ink, and paper, to instruct your counsel, and that you might derive every fair assistance from their advice, and the suggestions of your own mind. The law allowed you this, for it is the pride of our laws to labour more for the acquittal than the conviction of the accused, however black the allegations of offence, and yet for God's sake, consider how you have used this indulgence.

I have looked into parts of the pamphlet or paper you have written, and most unfortunate must it be for any man in your situation, to leave behind him such a hardened and unprincipled invitation to crime. You were not satisfied with bringing yourself to the end which awaits you, and having contributed to the fate of those who have gone before you; but at a time and under circumstances, where our thoughts have taken another direction, you were labouring to perpetuate our errors and your crimes, and by the influence of your wicked advice, bring to shame and death, after you were in your grave, poor men, who otherwise might live in peace, in-

dustry, and happiness, in the bosoms of their families. For God's sake, did you consider how erroneously you were aggravating the guilt which already pressed upon your soul? How could you reconcile to your conscience to bring any man to that fate, which had so justly overtaken yourself? or how could you, with any means of religious feeling, prepare to meet your God under such circumstances?—How could you hope ever to remain at rest in your grave, carrying with you into it, such deliberate and fiend-like enmity against the peace and happiness of your country?—Oh! it is lamentable, young man, to see the human heart so depraved, and the motives of public good so grievously perverted to the ends of social disorganization and misery. You appear to have been bred a mechanic, and it is easy to see, that you have not had learning to fit you for any higher station under the provisional or any other government: the obvious defects in your spelling, with other gross errors in that shocking composition of yours, now before the court, sufficiently prove how little your education could have justified or supported your ambition. Believe me it is no easy thing to become a legislator and a ruler. It is no small thing to assume the cares, and the weighty and intricate duties, which devolve upon the statesman; and eminently must he be gifted in himself, who undertakes to govern others. He should not only have an highly cultivated understanding, but he should also have experience; and the learning which he derives from past times should be directed by a knowledge of his own; he should be able to trace the hidden springs of human action; and he should have that strength of mental vision, which could pursue human nature into those recesses, where it escapes the observation of common men. With all this, he should have virtue, and be influenced by a tender and religious regard for the happiness of those committed to his care; else miserable must be the lot of that people, whose interests are subjected to the will of vice and inhumanity, whether allied with ignorance or talents. How were your power, or your dispositions calculated for public authority? You have by one and the same act furnished record against both. Not satisfied with having brought yourself under the avenging hand of the law, you dedicate that time which should have been devoted to God, and during which you should have worn with your knees the very flags of your cell, entreating forgiveness of heaven; that precious time you mis-spent in composing, and endeavouring to get published, one of the most wicked, remorseless, mischievous, and ill-intended pamphlets, that could possibly have been conceived.

It is really one of the most painful duties, which can devolve upon man, that of consigning to death one so unfitted for that awful event, as you are; and who instead of praying and repenting, has so recently been inflamed

with bad passions—and which you are only solicitous to communicate to others. I therefore intreat, that you will not mis-spend another moment, or add, by other deeds, to the sins which you have to answer for already. Humble yourself before your offended God, and do every thing which yet remains to conciliate his mercy; and rely, young man, that nothing can so effectually assuage the divine anger, as a becoming sense of your own crimes, and a sincere and contrite endeavour to prevent the continuation of those crimes, and of their consequences to your country.

The learned judge then pronounced the sentence in the usual form.

The prisoner was executed upon the Gallows.

Note.—This was the last person tried on special commission. He was to have been tried upon the 5th of September, on the morning of which day the gaoler went into the apartment, and found him lying on the floor, weltering in blood; a pistol was found by him, and it appeared, that he had shot himself in the head, but the piece of lead (it was not a ball) had taken an oblique direction, and had not entered the skull, medical assistance being immediately procured, the wound did not prove mortal, and he was completely recovered when he was tried.

The above circumstance was not in the manner mentioned during his trial.

669. Trial of MICHAEL HEDGES and JOHN HEDGES for Conspiracy and Fraud, at Westminster-Hall, before the Right Honourable Edward Lord Ellenborough, Lord Chief Justice of his Majesty's Court of King's-Bench, and a Special Jury, on the 7th day of December: 44 GEORGE III. A. D. 1803.*

INFORMATION.

Middlesex. BE it remembered that the honourable Spencer Perceval attorney general of our sovereign lord the now king who for our said lord the king in this behalf prosecutes in his proper person cometh here into the court of our said lord the king before the king himself at Westminster on Wednesday next after fifteen days from the feast-day of Easter in this same term and for our said lord the king giveth the Court here to understand and be informed that at the several times hereinafter mentioned Michael Hedges late of Rotherhithe in the county of Surry cooper and John Hedges late of the same place cooper were jointly employed by the principal officers and commissioners of his majesty's navy to deliver into the stores of his majesty's Dock Yard and Rope Yard at Woolwich in the county of Kent certain coopers' wares and to perform certain coopers' work in the said Dock Yard and Rope Yard from time to time as occasion should be and require at and for certain prices to be therefore paid by the said principal officers and commissioners on account of his majesty to the said Michael Hedges and John Hedges to wit at Westminster in the county of Middlesex and the said attorney-general of our said lord the king for our said lord the

king giveth the court here further to understand and be informed that at the several times herein in that behalf respectively mentioned of making and signing the several certificates hereinafter mentioned one Benjamin Pidcock one John Smith Musgrove one William Bradnock one George Eden one John Bradnock one William Smith and one George Fensham were respectively storekeeper's clerks in his majesty's said Dock Yard at Woolwich and said and that it was the duty of the said Benjamin Pidcock John Smith Musgrove William Bradnock John Bradnock George Eden John Bradnock William Smith and George Fensham so being respectively such storekeeper's clerks as were said to examine survey and take an account of and to make just and true notes of the work and materials from time to time as required and provided by the said Michael Hedges and John Hedges in the course of their said employment and that one John Jeffery as clerk several times herein in that behalf respectively mentioned of signing the several certificates by him signed as hereinafter is mentioned clerk of the cheque of the said Dock Yard and that one Richard Perring and one George Gainer at the several times herein in that behalf respectively mentioned of signing and subscribing the several certificates by them respectively signed and subscribed as hereinafter mentioned were respectively storekeepers in the said Dock Yard and that it was the duty of the said John Jeffery as such clerk the cheque and of the said Richard

* From the short-hand Report of Mr. Gurney.

Pering and George Gainer as such storekeepers as aforesaid respectively to make just and true certificates to the said principal officers and commissioners of the quantity and amount of the work and materials so from time to time done and provided by the said Michael Hedges and John Hedges in the course of their said employment to wit at Westminster aforesaid in the said county of Middlesex and the said attorney-general of our said lord the king for our said lord the king giveth the court here further to understand and be informed that the said Michael Hedges and John Hedges and the said Benjamin Pidcock John Smith Musgrove William Constable George Eden John Bradnock William Smith George Fensham Richard Pering and John Jeffery being so respectively employed in the said Dock Yard that is to say the said Michael Hedges and John Hedges as coopers the said Benjamin Pidcock John Smith Musgrove William Constable George Eden John Bradnock William Smith and George Fensham as storekeeper's clerks the said Richard Pering as storekeeper and the said John Jeffery as clerk of the checque as aforesaid they the said Michael Hedges and John Hedges and divers other persons whose names to the said attorney-general are as yet unknown being evil disposed persons and unlawfully wickedly falsely fraudulently and deceitfully contriving and intending to cheat and defraud our said lord the king of his monies with force and arms heretofore to wit on the fifteenth day of March in the year of our Lord one thousand eight hundred at Westminster aforesaid in the said county of Middlesex did unlawfully and wickedly conspire combine confederate and agree together falsely fraudulently and deceitfully to charge our said lord the king with the payment of more money than was or should become really due or payable to the said Michael Hedges and John Hedges for the work and materials done and provided and which should be from time to time done and provided by the said Michael Hedges and John Hedges in the course of their said employment and that they the said Michael Hedges and John Hedges and the said other persons whose names are to the said attorney-general as yet unknown in pursuance of the said conspiracy combination confederacy and agreement so had as aforesaid and in prosecution thereof afterwards to wit on the same day and year last aforesaid at Westminster aforesaid in the said county of Middlesex with force and arms did unlawfully wickedly knowingly falsely fraudulently and deceitfully cause and procure the said John Smith Musgrove as such storekeeper's clerk as aforesaid to sign and subscribe a certain false and fraudulent note of certain work and materials pretended to have been done and provided by the said Michael Hedges and John Hedges in the course of their said employment which said false and fraudulent note so signed and subscribed by the said John Smith

Musgrove as such storekeeper's clerk as aforesaid is to the purport and effect following that is to say

- 200 Tar Barrels hooped with 2 Iron and 2 Wood hoops on each
- 400 extra Iron hoops on Tar Barrels 2 on each
- 200 Tar Barrels trimmed and set to rights with 4 Wood hoops on each.

Woolwich 1800.

J. S. MUSGROVE,
15th March 1800.

With intention falsely and fraudulently to use the said false and fraudulent note as and for a voucher that the work and materials therein mentioned had been actually done and provided by the said Michael Hedges and John Hedges in the course of their said employment

[The Information then sets forth thirteen other notes, procured from the storekeeper's clerks with the like intention, and then proceeds as follows :]

And the said attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Michael Hedges and John Hedges and the said other persons whose names to the said attorney-general are as yet unknown having so caused and procured the said Benjamin Pidcock John Smith Musgrove William Constable George Eden and John Bradnock as such storekeeper's clerks as aforesaid to sign and subscribe the said several false and fraudulent notes so by them respectively signed and subscribed as aforesaid and having the possession thereof respectively in further pursuance of the said unlawful conspiracy combination confederacy and agreement so had as aforesaid and in further prosecution thereof afterwards to wit on the eleventh day of September in the year of our Lord one thousand eight hundred at Westminster aforesaid in the said county of Middlesex with force and arms did unlawfully wickedly knowingly falsely fraudulently and deceitfully utter and publish and cause and procure to be uttered and published at the office of the clerk of the checque of the said Dock Yard the said several false and fraudulent notes so signed and subscribed as aforesaid as and for just and true notes and vouchers that the said work and materials therein respectively mentioned had been actually done and provided by the said Michael Hedges and John Hedges in the course of their said employment and did then and there to wit on the same day and year last aforesaid at Westminster aforesaid in the said county of Middlesex cause and procure to be made out from the said notes a certain false and fraudulent account of certain work and materials supposed to have been done and provided by the said Michael Hedges and John Hedges in the course of their said employment between

the eleventh day of March in the year of our Lord one thousand eight hundred and the thirtieth day of August in the same year and afterwards to wit on the said eleventh day of September in the year last aforesaid at Westminster aforesaid in the said county of Middlesex with force and arms did unlawfully wickedly knowingly falsely fraudulently and deceitfully deliver and cause and procure to be delivered the said false and fraudulent account of the said supposed work and materials into the office of the storekeeper of the said Dock Yard to wit at Westminster aforesaid in the said county of Middlesex and the said attorney-general of our said lord the king for our said lord the king giveth the court here further to understand and be informed that the said Michael Hedges and John Hedges and the said other persons whose names to the said attorney-general are as yet unknown in further pursuance of the said unlawful conspiracy combination confederacy and agreement so had as aforesaid and in further prosecution thereof afterwards to wit on the same day and year last aforesaid at Westminster aforesaid in the said county of Middlesex with force and arms did unlawfully wickedly knowingly falsely fraudulently and deceitfully cause and procure the said John Jeffery as such clerk of the cheque as aforesaid and the said Richard Pering as such storekeeper as aforesaid to make and sign a certain false and fraudulent certificate of the quantity and amount of the said work and materials so pretended to have been done and provided by the said Michael Hedges and John Hedges in the course of their said employment which said false and fraudulent certificate so made and signed as aforesaid is to the purport and effect following that is to say

[See Table next Page.]

With intention falsely and fraudulently to use the said false and fraudulent certificate as and for a just and true voucher that the work and materials therein mentioned had been actually done and provided by the said Michael Hedges and John Hedges in the course of their said employment and that the sum of five hundred and forty-eight pounds eight shillings and seven pence was justly and truly due to them the said Michael Hedges and John Hedges for the same and the said attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Michael Hedges and John Hedges and the said other persons whose names to the said attorney-general are as yet unknown having so caused and procured the said John Jeffery and Richard Pering as such clerk of the cheque and storekeeper as aforesaid respectively to make and sign the said false and fraudulent certificate as aforesaid and the said Michael Hedges and John Hedges having the possession thereof they the said Michael Hedges and John Hedges in further

pursuance of the said unlawful conspiracy combination confederacy and agreement as in further prosecution thereof afterwards to wit on the said eleventh day of September in the year of our Lord one thousand eight hundred at Westminster aforesaid in the said county of Middlesex with force and arms did unlawfully wickedly knowingly falsely fraudulently and deceitfully present and deliver and cause and procure to be presented and delivered to the said principal officers and commissioners the said false and fraudulent certificate and did then and there utter and publish the said false and fraudulent certificate as and for a just and true certificate and as for a just and true voucher that the work and materials therein mentioned had been actually done and provided by the said Michael Hedges and John Hedges in the course of their said employment during the time in that behalf aforesaid and that the whole amount in money thereof was five hundred and forty-eight pounds eight shillings and seven pence with intention to obtain and procure payment of the same and that the said Michael Hedges and John Hedges afterwards to wit on the thirteenth day of March in the year of our Lord one thousand eight hundred and one at Westminster aforesaid in the said county of Middlesex falsely and fraudulently by the means aforesaid did obtain and procure from the said principal officers and commissioners of his majesty's navy the payment of a large sum of money to wit the sum of five hundred and forty-eight pounds eight shillings and seven pence of lawful money of Great-Britain for the said work and materials so falsely and fraudulently pretended to have been done and provided by the said Michael Hedges and John Hedges in the course of their said employment as aforesaid whereas in truth and in fact the said Michael Hedges and John Hedges had not nor had either of them during the time aforesaid delivered or caused to be delivered into his majesty's stores in the said Dock Yard and Rope Yard at Woolwich aforesaid or elsewhere the said several materials in the said several notes and certificates specified and whereas in truth and in fact the said Michael Hedges and John Hedges had not nor had either of them during the time in that behalf aforesaid done or caused to be done the said work specified in the said several notes and the said certificate but to the contrary thereof the said Michael Hedges and John Hedges had during the time in that behalf aforesaid delivered and caused to be delivered into the said stores in the whole a much less quantity of materials and had done and caused to be done in the said Dock Yard and Rope Yard in the whole a much less quantity of work than the said work and materials in the said notes and certificate specified to wit at Westminster aforesaid in the said county of Middlesex and that they the said Michael Hedges and John Hedges and the said other persons

Woolwich Yard, 11th Sept. 1800.

These are to certify that Messrs. MICHAEL and JOHN HEDGES have delivered the provisions following into his Majesty's Stores here, between 11th March and 30th August, 1800, per contracts 8th April, 1745, and 28th February, 1788, and warrant 2nd June, 1800.

EXTRA.

ON ACCOUNT OF THE EXTRA.

Coopers' Wares.

	Quantity.		Rate.		Value.		Coopers' Wares.
	Doz.	No.	£.	s. d.	per	£. s. d.	
Buoys Nunn, 3rd rate	13	—	0	13 10	each	8 6 0	
— 5th rate	14	—	0	10 0	—	7 0 0	
— Sloops, large	25	—	0	8 0	—	10 0 0	
Buckets, double, iron bound.....	—	6 0	0	10 6	doz.	3 3 0	
Iron hoops on ditto	216	—	0	0 4	each	3 12 0	
Buckets, single, iron bound	—	37 3	0	9 0	doz.	16 15 3	
Iron hoops on ditto	1341	—	0	0 4	each	22 7 0	
Punchcons	84	—	0	7 0	—	29 8 0	
Barrels, tight wood bound.....	90	—	0	3 6	—	15 15 0	
Hogsheads	12	—	0	5 0	—	3 0 0	
Bearing tubs	12	—	0	5 6	—	3 6 0	
Hoops set on ships masts.....	120	—	0	0 5	—	2 10 0	
— Press barrels	1600	—	0	0 3	—	20 0 0	
New heads made and put in press barrels	150	—	0	0 4½	—	2 16 3	
Heads taken out and put in again..	205	—	0	0 4	—	3 8 4	
Smart hoops set on barrels, &c. ..	—	17400	0	0 0½	—	36 5 0	548 8 7
Press barrels cross barred and headed.....	150	—	0	0 1	—	0 12 6	
More at 35l. per cent.....	—	—	—	—	—	188 4 4	
Warrant 3rd March, 1791.	—	—	—	—	—	65 17 6	
Stockholm barrels hooped.....	2200	—	0	1 6	each	165 0 0	
Warrant 7th October, 1795.	—	—	—	—	—	—	
Tar barrels trimmed and set to rights	2200	—	0	0 9	—	82 10 0	
Abate 20l. per cent. per warrant 26th August, 1785.....	—	—	—	—	—	501 11 10	
Warrant 6th March, 1798.	—	—	—	—	—	100 6 4	
Extra iron hoops on tar barrels ..	4400	—	0	0 7	each	401 5 6	
Warrants 6th and 24th Dec. 1798.	—	—	—	—	—	128 6 8	
Add 10l. per cent. on 188l. 4s. 4d. gross	—	—	—	—	—	18 16 5	
						548 8 7	

The whole sum is five hundred and forty-eight pounds eight shillings and seven pence.

S. S.

J. B.

J. JEFFERY.

R. PERING, 11th Sept. 1800.

persons whose names to the said attorney-general are as yet unknown then and there to wit on the several days and times in those respects aforesaid at Westminster aforesaid in the said county of Middlesex well knew the same and whereas in truth and in fact at the time when the said Michael Hedges and John Hedges so obtained and procured payment of the said sum of five hundred and forty-eight pounds eight shillings and sevenpence by the means aforesaid the said sum of five hundred and forty-eight pounds eight shillings and sevenpence was not justly due or payable to the said Michael Hedges and John Hedges for the said work and materials so by them falsely and fraudulently pretended to have been done and provided as aforesaid and they the said Michael Hedges and John Hedges and the said other persons whose names to the said attorney-general are as yet unknown then and there to wit on the same day and year last aforesaid at Westminster aforesaid in the said county of Middlesex well knew the same to the great damage, and deception of our said lord the king to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity

Second Count similar to the former, only omitting the notes signed by the storekeeper's clerks.

And the said attorney-general of our said lord the king for our said lord the king giveth the court here further to understand and be informed that the said Michael Hedges and John Hedges and the said John Jeffery and Richard Pering so being respectively employed in the said Dock Yard and Rope Yard as aforesaid that is to say the said Michael Hedges and John Hedges as coopers the said John Jeffery as clerk of the cheque and the said Richard Pering as storekeeper as aforesaid they the said Michael Hedges and John Hedges and the said other persons whose names are to the said attorney-general as yet unknown again unlawfully wickedly falsely fraudulently and deceitfully contriving and intending to cheat and defraud our said lord the king of his monies with force and arms afterwards to wit on the said eleventh day of September in the year of our Lord one thousand eight hundred aforesaid at Westminster aforesaid in the said county of Middlesex did again unlawfully and wickedly conspire combine confederate and agree together falsely fraudulently and deceitfully to charge our said lord the king with the payment of more money than was or should become really due or payable to the said Michael Hedges and John Hedges for the work and materials done and provided and which should be from time to time done and provided by the said Michael Hedges and John Hedges in the course of their said employment and that they the said Michael Hedges and John Hedges and the said other persons

whose names to the said attorney-general are as yet unknown in pursuance of the said mentioned conspiracy combination conspiracy and agreement so had as last aforesaid and in prosecution thereof afterwards to wit on the same day and year last aforesaid at Westminster aforesaid in the said county of Middlesex with force and arms did unlawfully wickedly knowingly falsely fraudulently and deceitfully cause and procure the said John Jeffery as such clerk of the cheque and the said Richard Pering as such storekeeper as aforesaid to make and sign certain false and fraudulent certificate of the quantity and amount of certain other work pretended to have been done and provided by the said Michael Hedges and John Hedges in the course of their said employment between the said eleventh day of March and the said thirtieth day of August in the year of our Lord one thousand eight hundred aforesaid which said last mentioned false and fraudulent certificate so made and signed as aforesaid to the purport and effect following that to say *(The certificate stated in the First Count is then set forth in this, and which is another respect similar to the First Count.)*

Third Count similar to the second, omitting that the offence is not stated to be a conspiracy, but merely as a fraud, and also excepting that the defendants were not stated to have procured the issue of the cheque and storekeeper to sign the certificate, but merely that the defendants having such certificates in their possession uttered and published the same as before.

And the said attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Michael Hedges and John Hedges and the said John Jeffery and Richard Pering being so respectively employed in the said Dock Yard and Rope Yard as aforesaid that is to say the said Michael Hedges and John Hedges as coopers the said John Jeffery as clerk of the cheque and the said Richard Pering as storekeeper as aforesaid they the said Michael Hedges and John Hedges did again unlawfully wickedly falsely fraudulently and deceitfully contriving and intending to cheat and defraud our said lord the king of his monies with force and arms afterwards to wit on the said eleventh day of September in the year of our Lord one thousand eight hundred aforesaid at Westminster aforesaid in the said county of Middlesex unlawfully and wickedly knowingly falsely fraudulently and deceitfully had in their possession a certain false and fraudulent certificate of the quantity and amount of certain other work and materials pretended to have been done and provided by the said Michael Hedges and John Hedges in the course of their said employment between the said eleventh day of March and the said thirtieth day of August in

year of our Lord one thousand eight hundred aforesaid signed by the said John Jeffery as such clerk of the cheque as aforesaid and by the said Richard Pering as such storekeeper as aforesaid which said last-mentioned certificate is to the purport and effect following that is to say (*The certificate stated in the former Counts is then set forth in this, and which is in all other respects similar to those Counts.*)

Fourth Count similar to the third, excepting that the Certificate stated in that Count is not set forth in this.

And the said attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said Michael Hedges and John Hedges and the said John Jeffery and Richard Pering being so respectively employed in the said dock-yard and rope-yard as aforesaid that is to say the said Michael Hedges and John Hedges as coopers the said John Jeffery as clerk of the cheque and the said Richard Pering as storekeeper as aforesaid they the said Michael Hedges and John Hedges again unlawfully wickedly falsely fraudulently and deceitfully contriving and intending to cheat and defraud our said lord the king of his monies with force and arms afterwards to wit on the said eleventh day of September in the year of our lord one thousand eight hundred aforesaid at Westminster aforesaid in the said county of Middlesex did unlawfully wickedly knowingly falsely fraudulently and deceitfully present and deliver and cause and procure to be presented and delivered to the said principal officers and commissioners a certain other false and fraudulent certificate which they the said Michael Hedges and John Hedges then and there had in their possession and which was signed by the said John Jeffery as such clerk of the cheque and by the said Richard Pering as such storekeeper as aforesaid whereby it was certified that the said Michael Hedges and John Hedges had delivered the provisions therein mentioned into his majesty's stores at Woolwich aforesaid between the said eleventh day of March one thousand eight hundred and the said thirtieth day of August one thousand eight hundred and in which said last mentioned certificate were particularly specified certain other work and materials pretended to have been done and provided by the said Michael Hedges and John Hedges in the course of their said employment during the time last aforesaid and by which said last mentioned certificate it was also certified that the whole sum of the said last-mentioned work and materials was five hundred and forty-eight pounds eight shillings and seven-pence and did then and there unlawfully, &c. utter and publish and cause and procure to be uttered and published the said last-mentioned certificate of the said John Jeffery and Richard Pering as and for a just and true certificate

and as and for a just and true voucher that the work and materials mentioned in the said last-mentioned certificate had been actually done and provided by the said Michael Hedges and John Hedges in the course of their said employment during the time in that behalf last aforesaid and that the total amount in money thereof was the said last-mentioned sum of five hundred and forty-eight pounds eight shillings and seven-pence with intention to obtain and procure from the said principal officers and commissioners of his majesty's navy the payment of the said last-mentioned sum of five hundred and forty-eight pounds eight shillings and seven-pence whereas in truth and in fact, &c. (*This count of the information then proceeds with the same negative allegations as are contained in the former counts.*)

[The fifth, sixth, seventh, and eighth counts of the information are similar in form with the preceding, but founded on sixteen other notes, and also the following certificate:]

[See the following Pages.]

Whereupon the said attorney-general of our said lord the king who for our said lord the king in this behalf prosecuteth for our said lord the king prayeth the consideration of the Court here in the premises and that due process of law may be awarded against them the said Michael Hedges and John Hedges in this behalf, to make them answer to our said lord the king touching and concerning the premises aforesaid.

To this information the defendants, in Trinity Term following, pleaded that they were Not Guilty, upon which issue was joined.

Court of King's Bench, Dec. 7, 1803.

The Information was opened by Mr. Peake.

The Hon. *Thomas Erskine* [afterwards Lord Chancellor *Erskine*].—Gentlemen of the Jury,—This cause is of great importance, both as it respects the government which prosecutes, and the defendants who are to answer to the accusation; and as the proofs will necessarily be long and complicated, in order to establish their guilt with that precision and certainty which the law in all cases impartially requires, I will once again explain to you the nature of the charge that you may be the better enabled to apply your minds to the consideration of the evidence by which it is to be supported.

The information charges that the two defendants, Michael and John Hedges, were employed by the principal officers of the navy, on account of his majesty, to deliver coopers' wares and to perform coopers' work, as occasion might require, in the dock-yard at Woolwich, for prices stipulated by contract; that the several persons named in the information were, during the period in question, in different situations of public trust, as storekeeper, clerk of the storekeeper, and clerk of the cheque; and that the defendants unlawfully

Woolwich Yard, 27th March, 1801.

These are to certify, that Messrs. MICHAEL and JOHN HEDGES have delivered the provisions following into his majesty's stores here, between 19th September, 1800, and 24th March, 1801, per contracts 8th April, 1745, and 28th February, 1789; warrants 2nd June, 1800, and 24th March, 1801.

ON ACCOUNT OF THE EXTRA.

	No.	Quantity.		Rate.		Value.		Extra	Covers
		Doz.	No.	£.	s. d.	per	£. s. d.		
R. PEARCE, 28th March, 1801.									
Nunn Buoys, 3rd rate	11	—		0	13 10	each	7 12 2		
5th	22	—		0	10 0	—	11 0 0		
6th	15	—		0	9 0	—	6 15 0		
large Sloops	33	—		0	8 0	—	13 4 0		
Buckets, single, iron bound	—	47	8	0	9 0	Doz.	21 9 0		
Iron hoops on ditto	1716	—		0	0 4	each	28 12 0		
Puncheons	12	—		0	7 0	—	4 4 0		
Barrels wood bound tight	2	—		0	3 6	—	0 7 0		
Rundlets with 4 iron hoops, 8 gall.	4	—		0	2 9	—	0 11 0		
6 gall.	18	—		0	2 0	—	1 16 0		
4 gall.	30	—		0	1 8	—	2 10 0		
Bearing tubs	12	—		0	5 6	—	3 6 0		
Hoops set on press barrels	5460	—		0	0 3	—	68 5 0		
Smart hoops set on barrels	6520	—		0	0 0½	—	13 11 8		
New heads made in press barrels	390	—		0	0 4½	—	7 6 3		
Press barrels cross barred	390	—		0	0 1	—	1 12 6		
More at 35l. per cent.	—	—		—	—	—	192 1 7	706 11	
Warrant 3rd March, 1791.							67 4 6		
Stockholm barrels hooped	1110	—		0	1 6	each	83 5 0		
Warrant 7th October, 1795.									
Tar barrels trimmed and set to rights	3006	—		0	0 9	—	112 14 6		
Abate 20l. per cent.	—	—		—	—	—	455 5 7		
							91 1 1		
Warrant 6th March, 1798.							364 4 6		
Extra iron hoops on tar barrels ..	2220	—		0	0 7	each	64 15 0		
Warrants 6th and 24th Dec. 1798.									
Add 10l. per cent. on 192l. 1s. 7d.	—	—		—	—	—	19 4 1		
Warrant 30th August, 1800.									
Wood hoops on tar casks	5376	—		0	0 2	—	44 16 0		
Warrant 2nd March, 1801.									
Tar barrels watering, filling, and bringing	2806	—		0	0 2	—	24 2 8		
Wood hoops on ditto	5584	—		0	0 1	—	23 5 4		
Warrant 17th June, 1793.	Bdls.								
Hoops streight for ships' quarters ..	960	—		0	3 6	Bdls	166 5 0		
							706 12 7		
J. JEFFERY.									

The whole sum is seven hundred and six pounds twelve shillings and seven pence.
J. B. S.S.

[The 9th, 10th, 11th, and 12th counts, with the like differences, are founded on fifteen other notes, and also the following certificate:]

Woolwich Yard, 23rd July, 1801.

These are to certify, that Messrs. MICHAEL and JOHN HEDGES have delivered the provisions following into his majesty's stores here, between 31st March and 14th July, 1801, per contracts 8th April, 1745, 28th February, 1782, warrants 2nd June, 1800, and 24th March, 1801, and 25th May, 1801.

EXTRA.

ON ACCOUNT OF THE EXTRA.

Coopers
Wares.

A. FERING, 23rd July, 1801.

	Quantity.		Rate.				Value.			
	Doz.	No.	£.	s.	d.	per each	£.	s.	d.	
Buoys Nunn, 2nd rate.....	0	0	0	0	0	—	0	14	10	
— 3rd	0	7	0	13	10	—	4	16	10	
— 4th	0	6	0	13	0	—	3	18	0	
— 5th	0	17	0	10	0	—	8	10	0	
— 6th	0	13	0	9	0	—	5	17	0	
Sloops, large	0	27	0	8	0	—	10	16	0	
— small	0	14	0	6	0	—	4	4	0	
Buckets, single iron bound	25	0	0	9	0	Doz. each	11	5	0	
Iron hoops for ditto	0	900	0	0	4	—	15	0	0	
Puncheons	0	40	0	7	0	—	14	0	0	
Barrels wood bound tight	0	36	0	3	6	—	6	6	0	
Rundlets with 4 iron hoops, 8 galls.	0	12	0	2	9	—	1	13	0	
— 4 galls.	0	24	0	1	8	—	2	0	0	
Hogsheads wood bound	0	24	0	5	0	—	6	0	0	
Hoops set on ship masts	0	900	0	0	5	—	18	15	0	
— Press barrels	0	13,818	0	0	3	—	172	14	6	
Heads taken out and put in again	0	79	0	0	4	—	1	6	4	
New heads on ditto	0	987	0	0	4½	—	18	10	1	904 9 4
Press barrels cross barred	0	987	0	0	1	—	4	2	3	
Nunn buoys for 6th rate and sloops repaired	0	57	0	2	6	—	7	2	6	
More at 35l. per cent.	—	—	—	—	—	—	317	11	4	
Warrant 3rd March, 1791.	—	—	—	—	—	—	111	2	11	
Stockholm barrels hooped	0	2916	0	1	6	—	218	14	0	
Warrant 7th October, 1795.	—	—	—	—	—	—	—	—	—	
Tar barrels trimmed and set to rights	0	2916	0	0	9	—	109	7	0	
Abate 20l. per cent per warrant 26th August 1785	—	—	—	—	—	—	750	15	3	
Warrant 6th March, 1798.	—	—	—	—	—	—	151	7	0	
Extra iron hoops on tar barrels ..	0	5832	0	0	7	—	605	8	3	
Warrants 6th and 24th Dec. 1798.	—	—	—	—	—	—	170	2	0	
Add 10l. per cent on 317l. 11s. 4d.	—	—	—	—	—	—	31	15	1	
Warrant 30th August, 1800.	—	—	—	—	—	—	—	—	—	
Wood hoops on tar barrels	0	11,664	0	0	2	—	97	4	0	
							904	9	4	

The whole sum is nine hundred and four pounds nine shillings and four pence.

B.

S. S.

[The 13th, 14th, 15th, and 16th counts of the information, are founded on ~~some~~ other notes, and also the following certificate:]

Woolwich Yard, 19th December, 1801.

These are to certify, that Messrs. MICHAEL and JOHN HEDGES have delivered the provisions following into his majesty's stores here, between 7th August and 11th December, 1801, per contracts 8th April, 1745, 28th February, 1782, and warrants 2nd June and 24th March, 1801.

ON ACCOUNT OF THE EXTRA.

	No.	Dox. No.	Quantity.			Rate.		Value.		
			£.	s.	d.			£.	s.	d.
G. GAINER, 19th December, 1801.										
Buoys Nunn, 1st rate	2	—	0	16	0	—	per each	1	12	0
3rd	18	—	0	13	10	—	—	12	9	0
4th	8	—	0	13	0	—	—	5	4	0
5th	37	—	0	10	0	—	—	18	10	0
6th	48	—	0	9	0	—	—	21	12	0
Sloops large	17	—	0	8	0	—	—	6	16	0
Buckets, iron bound double	—	1 6	0	10	6	—	Doz.	0	15	9
Iron hoops on ditto	54	—	0	0	4	—	each	0	18	0
Buckets, iron bound single	—	2 0	0	9	0	—	Doz.	0	18	0
Iron hoops on ditto	72	—	0	0	4	—	each	1	4	0
Puncheons	18	—	0	7	0	—	—	6	6	0
Barrels wood bound tight	48	—	0	3	6	—	—	8	8	0
Rundlets with 4 iron hoops, 8 gal- lons	2	—	0	2	9	—	—	0	5	6
Bearing tubs	31	—	0	5	6	—	—	8	10	6
Hoops set on ship's masts	—	0 1210	0	0	5	—	—	25	4	2
press barrels	—	0 8360	0	0	3	—	—	103	5	0
Press barrels new headed	—	0 590	0	0	4½	—	—	11	1	3
heads taken out and put in again	—	0 139	0	0	4	—	—	2	6	4
cross barred	—	0 590	0	0	1	—	—	2	9	8
Nunn buoys repaired 6th rate downwards	114	—	0	2	6	—	—	14	5	0
More at 35½ per cent	—	—	—	—	—	—	—	251	19	8
								88	3	10
								340	3	6
Warrant 3rd March, 1791.										
Stockholm barrels hooped	4171	—	0	1	6	—	—	312	16	6
Warrant 7th October, 1795.										
Tar barrels trimmed and set to rights	—	0 4209	0	0	9	—	—	157	16	9
Abate 20½ per cent per warrant, 26th August, 1785, on 653½	—	—	—	—	—	—	—	810	16	9
								130	18	0
Warrant 6th March, 1798.										
Extra iron hoops on tar barrels ..	7952	—	0	0	7	—	—	680	4	9
Warrants 6th and 24th Dec. 1798.								231	18	8
Add 10½ per cent on 351½ 19s. 8d.	—	—	—	—	—	—	—	25	3	11
Warrant 30th Aug. 1800.										
Wood hoops on tar barrels	17520	—	0	0	2	—	—	146	0	0
								1083	7	4

The whole sum is one thousand and eighty three pounds seven shillings and four pence.

J. B.

unlawfully and wickedly conspired together to impose upon those officers, and thereby to charge the king with the payment of larger sums of money than were really due and payable for the work performed, and the materials provided by them under their contracts: and it is farther charged that, in pursuance of this conspiracy, they procured the different officers named in the information, to subscribe the necessary vouchers as for work actually done, and materials provided, without having furnished either the one or the other.

Gentlemen, the charge which I have thus stated to you was made by his majesty's attorney-general, at the instance of the lords commissioners of the Admiralty, who had received information upon the subject from the commissioners of the navy; and, as these great offences range themselves directly under their department, I certainly owe it in justice to those gentlemen, to mention that, in the year 1797, they had made several regulations, which, if they had been observed by the inferior officers, who were bound in duty to attend to them, frauds of this enormous-magnitude could never have been committed, as the following orders appear to have been judiciously directed towards the prevention of every kind of abuse:

"First, that the works necessary to be done should be pointed out by the officers in whose department they were required.

"Secondly, that when the works were performed, they should be surveyed by three, or at least two clerks, and one officer, and an entry made in each office, according to the nature of the works done, and according to the different departments under which they ranged themselves.

"Thirdly, that the entries made in these offices should be compared with each other, previous to any bill being made out for the amount of the work done."

It is certainly but justice to the authors of these regulations to remark that the observance of them would have greatly contributed to the prevention of every kind of fraud; because, if no workman could be set to work until those in whose department it was to be done had sanctioned its necessity; if, after its performance, no voucher could have been made out, but upon actual survey by men of skill and observation; and, lastly, if such vouchers could not have been delivered for payment till after these entries in the different departments had been compared with one another, government must have been perfectly secured against impositions, as far, at least, as the infirmities of all human institutions will admit of absolute security. But, gentlemen, the best laws may become useless, and in the end pernicious, if a total relaxation in the execution of them is suffered to prevail; and I am sorry to be obliged to lay before you a system of plunder, arising from habitual neglect, and false confidence in those

whose duties I have described to you, which if suffered to pass unpunished, would soon extend itself (if it be not already more or less extended) throughout all the departments of the naval expenditure, till the country might be actually pulled down by the burthen of a system which, prudently administered, is the very foundation of her glory and her strength.

Shall I be believed, gentlemen, when I tell you that the subject matter of your present inquiry is a fraud and speculation committed in ONE Dock Yard only, by two contractors, or more properly but by ONE, as the two defendants are partners; confined to the course of a SINGLE YEAR, or a little more, and in ONE insignificant corner of the necessities of the British navy, BY A SINGLE WORKING COOPER, employed in the hooping of casks and the masts of a few ships? Shall I be heard without astonishment, gentlemen, when I state to you, that in this almost invisible corner of the necessities of the navy, in this ONE Dock Yard, by this SINGLE COOPER, during ONE YEAR ONLY, upon work amounting but to the sum of two hundred and thirty-five pounds five shillings and five-pence, in which I include all the value of the materials, and the fair profit of the tradesman, as settled by contract, government, by the frauds which are the subject of our inquiry, has, over and above this sum contracted for, paid to the defendants, upon the vouchers procured by them, the farther sum (you will think I am mis-reading the figures which lie before me, but I give them to you correctly) two thousand four hundred and fifteen pounds?—They received, indeed, in the period in question, two thousand six hundred and fifty pounds, but the sum I first gave you is the amount of the nett robbery and pillage of the country.

Gentlemen, it is impossible for any reflecting and considerate mind not to pause here a little, and to consider the state and condition of our country, if these frauds should extend themselves, much more if they are in any degree already extended, throughout the vast extent of the demands and necessities of the navy of Great-Britain, from the first preparation of timber for the construction of our ships, throughout the process of their building; in the providing of their masts, sails, and rigging; in the supplying them with stores, furniture, and provisions; in the aggregate, in short, of all which enters into the account of this stupendous fabric of our national safety. For myself, I shrink back from the contemplation of such evils; but it is our duty to contemplate them, and to provide the remedy.—Let us then consider, gentlemen, the state and condition of our country at this momentous crisis: it is no unfit digression when the objects of this trial are reflected on.

We behold, at this moment the great powers of Europe, which formerly held its balances, looking silently at one another, in-

active spectators of the mighty preparations of France, *avowedly* directed to prostrate or o'erleap the only mound which opposes itself to her universal dominion. We see upon the shores of the continent, from Spain to the Baltic, numerous armies gathered together, and fleets constructing for their passage; and we see our own country in arms from one end of it to the other. No man can place a greater reliance than I do upon the bravery and zeal which inspire us; but neither bravery nor zeal can defend us against a procrastinated contest, if the sources of our strength are suffered to be undermined by fraud in the administration of our finances. Let it be remembered, that we are not merely contending to remain upon the soil in which we have been planted by our fathers, from whence no human strength can drive us; but we are in arms for the inheritance of our laws and independence, which the wisdom of ages has matured for our happiness: and let it never be forgotten, that neither laws nor independence can have a separate existence from the PUBLIC HONOUR AND FAITH OF GREAT-BRITAIN. It is our PUBLIC FAITH which has placed us at the head of the nations of the earth, and we must descend from that proud eminence the moment that it is broken. But the public faith of a nation, like the private faith of an individual, must depend upon resources, and resources must for ever depend upon economy. The analogy is self-evident, and I pray you to consider it. What fortune, however ample, beyond every computation of necessity or the highest scale of luxury, could support a fraud upon every payment in the proportion of 2,400*l.* upon 235*l.*? The richest trader in Great-Britain must, upon such a footing of expenditure, inevitably become bankrupt.

The cause, therefore, is one of the most momentous that can be offered to the consideration of a court of justice; but, for that very reason, the defendants are entitled to a greater share of your attention. In proportion to the magnitude of the crime, and the severity of the punishment which attends it, your ears should unquestionably be open to those who are to repel it.

Gentlemen, these frauds have but very lately come to light, and have been forced into day by the spirit and perseverance of the noble person at the head of the Admiralty, who brought them under the consideration of the attorney general, whose deputy I only am (by his desire), in laying the matter before you. I owe it in justice to that noble admiral to say, that I can scarcely remember his merits as a captain of a British Man of War, in the beginning of his life, bringing the superior ships of our enemies into our ports—I can scarcely recollect him, even off Cape Saint Vincent, on that memorable day of national glory—because, in my mind, he has eclipsed all his former reputation, by his present exertions at the head of the board

where he presides, fighting against corruptions, which, unless they are subdued will destroy every effect of bravery and skill: this virtuous pursuit he has had to encounter enemies hitherto unknown to him—he has had to encounter misrepresentation and calumny: but, to use the expression of a noble eloquent writer, whose writings will prove hereafter to be the characteristic eloquence of Great Britain—"He will remember that eloquy is a necessary ingredient in the position of all true glory: he will remember that it was not only in the Roman Comedians, but that it is in the nature and constitution of things, that calumny and flattery are essential parts of triumph."

Gentlemen, I will now state to you the manner in which the fraud was committed and detected, and the evidence by which it shall establish it.

The Navy-board has been in the custom of contracting with different persons, in the different departments, for a great number of years, by which certain prices have been established for almost every article required at the dock-yards. These contracts have generally been made for a year or two only, but continue afterwards until terminated by six months notice on either side. As long as the year 1745, the commissioners contracted with Mary Gunter, to supply the dock-yard of Deptford and Woolwich with stores of the same description as those provided by the defendants; that contract was continued in the year 1782, when it was transferred, by an agreement, to Messrs. Young, Adams, and Corsen, who contracted as the guardians of these unhappy men, who were then widows and orphans: their mother, in her lifetime, having had the contract with government. The contract runs thus:—"We do hereby bargain and sell to his majesty, and sell ourselves, free of all charge, to supply his majesty's yards at Deptford and Woolwich, with all such nunn buoys, buckets, barrels, rundlets, hoops for masts, and all other particulars mentioned in Mrs. Mary Gunter's contract, of the 18th of April, 1745: we shall from time to time, be demanded of by the principal officers, commissioners, or proper officers of the yards." (Then follow the different prices at which these different articles were to be provided and manufactured). And Messrs. Young, Adams, and Corsen, having afterwards requested that the contract so held in trust might be transferred to Michael and John Hedges, an order was issued accordingly, dated the 2nd of June, 1801, directing the certificates to be made in future in the names and on the account of the defendants. Thus, the original contract of Mary Gunter, which passed to the guardians of the defendants, was, on their coming of age, assumed by themselves.

The defendants being now contractors with government on their own account, took occasionally into their service William Roberts

who had been formerly an apprentice to Young, Adams, and Corsen, and began to instruct him in the practice of frauds, which, though they do not come in point of time within the scope of the information, will, nevertheless, become unquestionable and decisive evidence; because the subsequent instructions employed by them in practising the impositions in question, were referred to these former instructions. We might rest, indeed, upon the mere comparison between the work done and the materials provided, with the vouchers for immensely larger amounts: this medium of proof would in itself be sufficient; but we shall prove the direct instructions for the fraudulent differences, the bribes given to their servants for their instrumentality, the actual frauds committed under their influence, and the actual loss which fell upon government, from stage to stage, as they were accomplished. The inducement to fraud held out by the defendant John Hedges to Roberts, his servant, was this—that whatever quantity of work he could bring a note for from the clerk of the store-keeper, he would pay him proportionably for his labour, as if the work had actually been performed; and having thus secured punctuality in imposition, he directed that whatever work he did, were it but a hoop upon a single cask, he never was to charge less than for the cooerage of AN HUNDRED BARRELS: and if there were more than an hundred, there were to be no fractions, but he was to charge two HUNDRED, and so in proportion—these were the instructions which, long before the period of this information, were given by John Hedges to his servant. Roberts himself will prove that, during his time, he has heard both the defendants justify this practice, saying, that unless the work was overcharged, the contract would not be worth having; and he will swear, that, at their express desire, he instructed John Gardiner, who was to succeed him, in the manner of making these charges, and of procuring notes from the store-keeper's clerk for the fraudulent excess. This Gardiner succeeded Roberts, who had been thus employed, in the same nefarious transactions, previous to the time, comprehended in the information; but, as the instructions were given to Roberts by the two defendants, and as they further directed him to instruct Gardiner, who succeeded him, and as Gardiner, in pursuance of these instructions, carried on the frauds within the period in question, the original instructions to Roberts become unquestionable evidence; not, indeed, to affect the defendants with the penalties beyond the scope of the charge, but to fix them as the criminal sources of all the frauds committed within the limits of it.

Gentlemen, I will now state to you the manner in which these frauds were accomplished; and the uniform success of them undoubtedly reflects very deeply upon the conduct of several inferior officers, who are paid by the public for the discharge of duties which

appear to have been wholly neglected; at the same time, I am bound in justice to admit, that the manner in which they brought these conspiracies when detected, to the knowledge of government, though it implicated themselves in the charge of extreme inattention, exempts them from the slightest suspicion of having been criminally privy to any of them, though they certainly had greatly relaxed in the observance of the duties imposed upon them by the regulations of the Navy-board.

Under these regulations, the work should have been first determined to be necessary, and pointed out for execution, instead of suffering the contractors to come into the yard and cooper at their own pleasure, and for their own benefit. Secondly, when the works were performed, they should have been surveyed by three, or at least two clerks and an officer, and an entry made in each office, authenticating, from actual measurement, the service to be paid for, and, thirdly, the entries in these different offices should have been compared, as checks upon one another, previous to any bills being made out for payment. But instead of any attention to these salutary provisions, the mode pursued was this—the defendants sent their workmen whenever they pleased to the dock or rope-yard, who, after having done what work was wanted, and frequently no work at all, made out a note, in the form which will be exhibited in evidence: this note, which contained just what the workman thought fit to put in it, he carried to the store-keeper's office, and, upon telling the clerk there that he had done the work contained in it (for that was the whole form gone through), the clerk, without any survey, according to the regulations of the Navy-board, entered it in the workmanship book, which then became a kind of record; and all the subsequent vouchers, instead of being founded upon actual examinations in the different offices, only tasked back to the workmanship book, which being, as I have already described it, a mere copy of the note, without examination or even question, there was no possibility of detecting the fraud through any of the stages towards payment. In this manner the impositions were practised, first by Roberts, afterwards by Gardiner, and after him by Havinden, who succeeded him; each of them, in their turns, doing some work or no work, and setting down just what they pleased, or rather what they were directed by their masters.

Mr. Garrow.—It has been communicated to me that it is wished the witnesses for the Crown should go out of court, that they may be examined apart; all the witnesses on both sides must therefore withdraw.

After the witnesses had withdrawn, Mr. Erskine proceeded:—

Gentlemen, I was stating to you, that instead of any observance of these regulations for the protection of the public, the cooper's workman put down upon a piece of paper

just what he chose, no man seeing his work done, no man measuring it, no man checking it in the offices through which it passed. If one hoop was put upon one cask, he set down six hoops upon one hundred, and was paid for his personal labour by his masters as if the whole of such work had actually been done; and it cannot therefore be doubted, that, with such a strong impelling motive to persons in these low situations, they would be most scrupulously uniform in these fraudulent accounts. The routine was universally this:—The clerk in the storekeeper's office, on having these false notes presented to him, containing six hoops on two hundred casks, or any other work, transcribed it, as of course, into the workmanship book, and signing his name to the notes so entered, returned them to the workman, who delivered them, from time to time, to the defendants; who, at the end of the quarter, sent them in as vouchers, to the clerk of the cheque's office, with an account drawn up of their aggregate contents. In the clerk of the cheque's office they have no means of examining the work, and the notes were therefore only compared with the workmanship book, which could not but uniformly confirm them, since it was itself only a copy of the notes themselves; the workmanship book was as sure to support the account of the work, as a man is sure of seeing his own image when he looks into a glass. After this faithful correspondence of accounts and quantities, a rough certificate was prepared as of course, containing a specification of the articles, with their quantities, rates, and values, to be passed through the other offices; but in all of which, without any fraudulent privity in the officers, the different entries being compared with the very image of the original fraud, committed through the instrumentality of the workman, the imposition, instead of being detected, received the sanction of all the departments, until a certificate was made out, as a foundation for a Navy bill, to be drawn upon the treasurer of the navy, for payment upon these false and fabricated accounts. In this manner, instead of each office being, in its turn, a check upon the office preceding it, and all of them a check upon the contractor; the contractor himself, through his servant, uniformly obtained the original false entry in the first; which becoming a voucher to the second, passed on to the third, each officer leaning upon the supposed examination of another, when, from the beginning to the end, *none had ever taken place*. It may be said, that the witnesses by whose evidence these frauds are to be established, after having pillaged the public to enrich themselves, come here to throw the blame and odium on their masters; and it may be said also, that as accomplices, they are unworthy of credit; but to these observations, if they are made, there is this plain answer: the fraud does not consist merely in the overcharge of the men's work, which rests

upon their testimony only, but in the charge of materials never furnished. If the materials were furnished, the defendants have no means of showing it. They say, for instance, that between the 11th of March, 1800, and the 11th of December, 1801, they expended many casks, which took materials to a certain amount charged: I answer, first, there were not so many casks in the whole dock-yard; secondly, where were the materials purchased? by whom and to whom were they delivered? and where are the entries in the books of this stock in trade? If the witnesses therefore, shall swear falsely, the defendants will have it in their power to convict them.

After having proved the instructions given to Roberts, we shall prove that the orders were given to Gardiner, and especially to the hooping of ships' masts. John Hedges gave him particular orders never to charge fewer than one hundred and twenty hoops for each ship, although upon an average the different rates, twenty were sufficient to send them completely equipped out of the dock. If the truth of this testimony is disputed, I ask the same questions: Show me how many hoops you had in store? to whom you purchased them, and to whom you delivered them out? and what were the entries which could possibly require such a number? Suppose, besides, a fraudulent servant to be said to his master, deliver to me a thousand hoops for the masts in the dock-yard; the master must have immediately known that such a number could not have been required. The case, therefore, will not rest upon mere evidence of accomplices, but will receive support from the nature of the transaction itself, and from a deficiency of it on the defendant's part, inconsistent with the actual supply to the extent of the charges.

Gardiner was succeeded by Havinden upon his entering into the same service; the defendant John Hedges showed him a certificate in Gardiner's hand-writing, and told him he was to make out his certificates in the same manner, which he did accordingly, from that time to July 1802; and, upon the whole, it will appear that this system was pursued by the defendants from their first taking up the business in 1793, down to the month of May 1802, by the instrumentality of Roberts; and by instructions from him from 1793 to 1802, which will be evidence of their privity, though not within the scope of the information, and which was carried on afterwards within the periods charged, by Gardiner and Havinden; by Gardiner from 1799 to 1801, and by Havinden from January 1801, to May 1802 in the year following.

Gentlemen, I will not detain you longer with any farther observations in this stage of the proceedings, having no other view but to render the evidence intelligible. The defendants were very desirous of getting the witnesses out of the hands of government.

together, contending, as they probably will contend to-day, that they themselves were the victims of their servants mal-practices. I have already repelled the possibility of such an argument in their exculpation; and, indeed, in such hands as the defence is placed I can hardly expect such an attempt. It has also been said, that even admitting the facts as I have stated them, though it would amount to such a gross and unjust overcharge as might wholly discharge the right of action for the demand, yet that it cannot be considered as a criminal offence: this, however, I am persuaded, will not be said in court, because, under the circumstances of this case, such a defence is impossible.

EVIDENCE FOR THE CROWN.

Mr. Charles William Foster sworn.—Examined by Mr. Garrow.

You are a clerk in the navy office?—Yes.

Have you brought with you any contracts entered into by Mrs. Mary Gunter, and by Young, Adams, and Corson?—I have.

Is that the original book kept at the Navy-office?—It is.

What is the date of the first contract?—The 8th of April, 1745.

State the effect of it?—It is a contract entered into by Mrs. Mary Gunter, of Rotherhithe, for supplying his majesty's yards at Deptford and Woolwich, with certain articles of coopers wares.

Just state the sort of articles?—Nunn buoys, wood buckets, butts, puncheons, hog-heads, rundlets, barrels, and hoops of various kinds.

Hoops for masts, as well as for barrels?—Hoops for masts, as well as for butts, press-barrels, and other barrels.

Were those contracts renewed, from time to time, with Mrs. Gunter, and afterwards with Messrs. Young, Adams, and Corson?—Yes, they were.

Are those contracts for definite quantities, or to provide such quantities as should be required?—"To deliver into his majesty's stores at Deptford and Woolwich, all such quantities of nunn buoys, buckets, barrels, rundlets, hoops for masts, and such other particulars under-mentioned as shall, from time to time, be demanded by the commissioners."

And paid for, of course, according to the quantity that was rendered?—"To have bills made out for what goods were delivered in virtue of this contract quarterly."

Mr. Dallas.—Is the price of each article stated?—It is.

Mr. Garrow.—Those prices were afterwards, during the currency of these contracts, varied from time to time, sometimes increased and sometimes decreased?—They were.

Have you here the various documents which show that?—I have not got them, but a gentleman attending has.

Turn to the warrant of the 2nd of June, 1800, for transferring this contract to the defendants?—Another gentleman has that warrant.

Have you the letters of the defendants?—Mr. Briggs has them; I speak to nothing but these contracts.

Lord Ellenborough.—You have in that book, I suppose, the renewed contract with Young, Adams, and Corson?—Yes.

Lord Ellenborough.—That is in substance the same as the former contract, I suppose?—It is. On the 26th of February, 1782, Joshua Young, Richard Adams, and Alexander Corson, contracted and agreed with the commissioners of his majesty's navy, free of all charge to his majesty, to supply his majesty's yards at Deptford and Woolwich, with the same articles mentioned in Mrs. Mary Gunter's contract, with an advance in the prices of thirty-five per cent.

Mr. Charles Foster cross-examined by Mr. Dallas.

The contracts that you have produced are for the delivery of certain articles into the king's stores?—Yes.

At stipulated prices, which prices are specified in the contract?—The prices are mentioned in Mrs. Mary Gunter's contract, and in Mr. Hedges's contract; but there has been an increase granted, by way of indulgence, by warrant, which is not in the contract.

But, in fact, there were certain prices stipulated in each contract?—There were.

Both those contracts are for goods to be furnished into the dock-yard?—They are.

Neither of them relates to work and labour to be done, there are only materials to be furnished?—There is the article of hoops.

Under what stipulation in the contract were the defendants to do the work in the yard?—"They engage to deliver such quantities as shall be demanded, at the prices there expressed; and to deliver them so timely and seasonably, after demand, as that his majesty's service shall not suffer or be delayed from the want thereof."

But I understand they were employed, by their workmen or themselves, to do a great deal of work in the yard; what part of the contract refers to the work done in the yard, and not to goods sent in at certain prices?—Here is an article—"For hoops set or put on masts at so much each; and also for hoops set on pipes or press-barrels, smart-hoops set on barrels, at so much each."

Mr. Erskine.—That is for the materials and labour blended together?—Yes. It says—"Fastened with so many nails, at so much each; cross-barring press-barrels; heads made and put into all sorts of dry casks, at so much; ditto, taken out and put in again."

Lord Ellenborough.—There is a price specified for each of these particular parts of labour?—Yes. "Heads made and put into

"all sorts of dry casks, one with another, at 4½d. each; ditto, taken out and put in again, into all sorts of dry casks, one with another, at 4d. each; heads, new, put into tar barrels, at 4½d. each; nunn buoys repaired, at so much each."

Mr. John Thomas Briggs sworn.—Examined by Mr. Garrow.

You are a clerk in the Navy-office?—Yes.

Have you a warrant of the 2nd of June, 1800, for transferring Messrs. Young, Adams, and Corson's contract to the defendants, Messrs. Hedges?—Yes, I have.

Will you have the goodness to read it?—June 2nd, 1800. By the principal officers and commissioners of his majesty's navy: Messrs. Young, Adams, and Corson, having requested that the contract for supplying your and Woolwich yard with coopers' wares, which they at present hold for Messrs. Michael and John Hedges, the sons of the late Mary Ann Hedges, may be transferred to them, these are to direct and require you to make out all certificates, in future, in the names of Messrs. Michael and John Hedges accordingly."

The word "your" imports Deptford?—It does; there is another for Woolwich, with the same alteration.

That, in other words, is a substitution of them for the former contractors?—It is.

From that time the certificates were made out as there directed, and they were acted with as the contractors?—They were.

I believe you have a warrant of the 13th of August, 1800, for allowing an increased price upon certain articles?—I have. "Messrs. Michael and John Hedges having requested that they may be allowed 2d. for each wood hoop that they may put on the tar casks at your yard, which are larger than the common-sized casks, these are to direct and require you to comply therewith."

Which of the yards is that?—Woolwich only.

Mr. Gibbs.—Who keeps this book?—I do. You keep it yourself?—I have occasionally one, two, or three assistants, as the quantity of business may require.

Is this entered by you or by them?—That is entered by me.

From what authority did you enter it?—From the original order, signed by the commissioners of the navy.

Lord Ellenborough.—The books in which these proceedings are entered are just the same as books that are read in every criminal trial; for instance, the books at the India-House.

Mr. Garrow.—We have the originals here, but it was more convenient to turn to the books. That is the original order of the commissioners of the 2nd of June 1800; are you acquainted with the hand-writing of the commissioners?—Yes.

That was signed by them and afterwards entered by yourself, or by others under inspection and direction?—Yes.

There were, from time to time, afterwards allowances made of increases upon various articles, and at other times abatements made by orders which you have here?—Yes, I have several orders here to that effect.

Mr. Gibbs.—I submit to your lordship that this paper, which is now produced as the original, cannot be given in evidence without being stamped. Your lordship knows, by the Stamp act, every paper that is an agreement, or that is produced as evidence of an agreement between parties, must have an agreement stamp. In the first place, they produced a contract between certain persons and the commissioners, and then they endeavoured to prove by this paper that a contract was transferred by the commissioners to the present defendants: this paper, therefore is evidence of an agreement between the commissioners and the present defendants that the present defendants should perform that contract in future; therefore I submit it ought to have an agreement stamp.

Mr. Erskine.—This is nothing in the nature of an agreement or contract, but it is a direction by the commissioners of the navy to their servants, in consequence of a contract, to issue certificates in a certain form. It is merely a direction to do something in performance of a contract.

Lord Ellenborough.—It is merely a direction to make out certificates in a particular way that does not require a stamp.

Mr. Erskine.—The information does not charge a contract, but that the defendants were employed to do this work; it is not in as a contract, or to prove a contract; it is not offered *ex intuitu*.

Mr. Gibbs.—After reciting the former contract, it states that that contract was transferred, and in consequence of the contract being transferred, orders the clerks to make out the certificates in their name. This is a direction to make out the certificates in the names of Michael and John Hedges; certain; but the effect of it, I apprehend, is to show that that contract which has been given in evidence between the commissioners and Mary-Ann Hedges, the original contractor, has been transferred to the present defendants.

Lord Ellenborough.—If it is virtually to incorporate the old contract, and make the defendants contractors upon the old terms, to the extent I cannot receive it; but there is one purpose to which I can receive it, namely, the direction to the clerks to make out the certificates in their names.

Mr. Garrow.—We use it only as evidence that they were employed; we will show that the certificates were afterwards made out in that way with their knowledge.

Richard Pering, esq. sworn—Examined by *Mr. Jervis.*

I believe you were storekeeper of his majesty's Dock Yard at Woolwich?—I was.

Were you so in the month of September, 1800, and from that time to the Month of July, 1801?—

Mr. Dallas.—I submit to your lordship whether, as the employment of these defendants was under a written contract, that contract must not be produced. I agree that no contract is stated in the information, but it is alleged, that the defendants were employed: it now turns out in the evidence that that employment was under a written contract; therefore, I submit, they are bound to produce that contract, in order to show the terms upon which the defendants engaged to do the work.

Mr. Erskine.—I think my friend wants the foundation of his argument,—that it is in evidence that they were employed under a written contract.

Mr. Dallas.—This document says, that they request the contract may be transferred to them; and in consequence of that request being complied with, directions are given to the officers of the Dock Yard; therefore it appears, from the document produced by *Mr. Erskine*, that they were employed under the former contract, which contract was transferred to them.

Mr. Erskine.—The paper says this—“Messrs. Young, Adams, and Corson, having requested that the contract for supplying Woolwich yard with coopers' wares, which they at present hold for Messrs. Michael and John Hedges, the sons of the late Mary-Ann Hedges, may be transferred to them, these are to direct and require you to make out all certificates in future in the names of Messrs. Michael and John Hedges accordingly.” This paper does not show that there was afterwards a written contract between them, or any thing in the shape of it.

Lord Ellenborough.—They contend that that is a written contract.

Mr. Erskine.—If I understand the nature of the objection, it is this—That, although the information only charges these defendants with fraud, which fraud they committed when employed by the commissioners of his majesty's navy in supplying the yard at Woolwich with coopers stores, it appears in evidence that they were employed under a written contract, and that, consequently, I cannot go into the evidence without producing that written contract. If I were charging them with an act done under a contract, I must produce it, provided it were once shown that there is a written contract; but I am not charging them with the omission of any thing which they ought to have done under their contract, but that, in consequence of their employment in the yard, they committed a fraud in that em-

ployment; there is no evidence that a contract was entered into with them; this is only a request that the former contract may be transferred to the defendants, and that the certificates may be made out in their names; and then there is a direction to the officers in the yard to comply with the request made by the defendants. The contract with Messrs. Young, Adams, and Corson, has been given in evidence without objection. Then does this request of the defendants, and our order to comply with that request, constitute a new contract in writing? or is there any thing upon your lordship's notes proving that, in consequence of Young, Adams, and Corson, having desired that their contract might be transferred to the defendants, a new contract was entered into between the commissioners of the navy and Michael and John Hedges, to which they put their names? First, I say, that there is no proof at all before the Court that any written contract ever was entered into.

Lord Ellenborough.—This is a written contract; if you do not go upon this, we will strike it out; if you take upon you to allege that he was employed by the commissioners to deliver these articles into the store, and perform certain coopers work, you may prove it by other evidence; but if you use this as means of proving that employment, it is an instrument in writing; and if there be no exemption in the statute, it falls within the law.

Mr. Erskine.—Your lordship has before you two contracts, which are proved; the contract in 1745, with Mary Gunter, and the contract in 1782, with Messrs. Young, Adams, and Corson.

Mr. Gibbs.—Upon looking at the contract in 1782, I see there is a subscribing witness to it.

Lord Ellenborough.—Do not start another point at present.

Mr. Erskine.—Your lordship has at present before you two contracts, one of Mary Gunter, bearing date in 1745, and one of Young, Adams, and Corson, in 1782. My learned friends now fire across me a new objection, which I am not prepared to grapple with, because I do not know what it is, or how it is supported in point of fact; at present it has been read as a contract; but will your lordship permit me to remind you of circumstances not yet referred to? that is, a contract with the Hedges's they are *Cestui qui* trusts upon the face of the contract; Young, Adams, and Corson, contract with government, not for themselves, but as guardians of these orphans; then these orphans ratify the contract of their guardians, and when they come of age they do not enter into a new contract, because there was a contract in existence of which they have all along had the benefit, which they might repudiate or ratify; they do not repudiate it, but they prefer a request, desiring that the certificates might be made

out in their names; they did not want a contract for there was a contract made before by their guardians on their behalf; Messrs. Young, Adams, and Corsen state, that they have contracted on account of these young men when infants, and that they at present hold it for them; the defendants were always beneficially interested in it; they had been of age for some little time before that; these gentlemen had held it for them after they were of age; and at last, when they entered into business for themselves, they desired that the certificates in future might be made out in their names. In consequence of this request, the commissioners, by the paper I have in my hand, direct the officers to make out the certificates in their names. Now, I should be glad to hear my friend tell your lordship how the stamp laws can attach upon this. The defendants did not act in consequence of any contract entered into between them personally and the commissioners, but they adopted a contract which had been entered into before on their account, and of which they had received the benefit; and the only thing that was done was, to direct the certificates, before made out in the names of those who were nominally the contracting parties, Messrs. Young, Adams, and Corsen, to be made out in future in the names of those who were really so. Secondly, I say that, supposing I am not fortified in the answer I have given to this objection, I apprehend, that this being a criminal information for a fraud practised by men who took an employment upon them; though if I were to offer a contract in writing not stamped your lordship could not receive that contract, certainly not without a stamp if it is a contract which comes within the scope of the stamp laws; yet, I say, as this is a charge that the defendants went into the Dock Yard, made out a bill for having put so many hoops upon so many casks, when they knew that those hoops had not been put on; that being employed, it is no matter whether they were employed under a contract or not.

Lord *Ellenborough*.—But you are now upon this instrument: you may, perhaps, lay aside the whole of this evidence and do very well without it.

Mr. *Garrow*.—I will just state what the information is:—It is, that these persons were jointly employed by the commissioners of the navy to deliver into the store at Woolwich certain cooper's wares, and to perform certain coopers work; therefore, what we are called upon to prove, and what we submit to your lordship, we are giving competent evidence to prove is, their joint employment; that I can do, by calling any person to prove they had ever delivered a bundle of hoops, or driven a nail in that yard; but inasmuch as there are certain writings which regulate the employment of these persons we have laid this paper before your lordship. Now, it is suggested that it appears there is a contract in writing

between the commissioners and these persons; the objection assumes that as a fact which is not so; The paper does not prove or assume that as a fact: your lordship observes, that there had been a contract between the commissioners and Messrs. Young, Adams, and Corsen, on behalf of the defendants, while infants; when these young men come of age, they desire that the contract (that is the term of their request) may be transferred to them; but the commissioners do not direct that the contract shall be transferred to them, in which case they would become new contractors by writing, but they say this to their servants, "We have had a request from Messrs. Hedges, through their guardians, Messrs. Young, Adams, and Corsen, desiring that the contract may be transferred to them. you will therefore (to speak in the terms of the instrument) make out your certificates for the future in the names of Messrs. Hedges. We did not use this as evidence of a contract, but merely to show that there was an authorized employment, which is all we are interested to make out. We refer back, from time to time, to warrants issued by the commissioners of the navy for the terms upon which that work was to be done; but no contract ever did exist between the commissioners and these defendants, and we do not assume that any did.

Lord *Ellenborough*.—I am perfectly satisfied that this does constitute a contract between the parties; the one party requires that an existing contract, in the names of Young, Adams, and Corsen, who were the trustees of these parties before they came of age, may be transferred to them. What is the party to whom the request is made? the persons competent so to transfer it, and to adopt other persons, specifically, as the contractors; they then immediately act as if they adopted that request; they give effect to it, and direct their officers to make out all certificates in future in the names of Michael and John Hedges, as the new contractors; of course "accordingly" means as new contractors in the place of the old ones. I am perfectly clear, therefore, that this is evidence of an agreement; that it does constitute an agreement between these parties; and that unless there be some exemption in the act, it ought to be stamped. The act, I see, exempts agreement for hire; but I think that means the hire of persons not supplying materials as a contractor; for instance, a compound contract of partly labour to be employed, and partly goods to be furnished, I think is not within the exception of the act.

Mr. *Garrow*.—We are content your lordship should not receive the evidence, and will stand upon the actual employment.

Mr. *Dallas*.—The employment being in writing, I shall object to any other evidence.

Mr. *Jervis* (to Mr. *Pering*).—You were storekeeper at Woolwich yard from the month of September 1800, including that month, down to July 1801?—I was.

And for a considerable time before, I believe?—For five or six years.

Do you know the defendants Michael and John Hedges?—I do not, I never saw them in my life.

Do you happen to know whether any persons of that name were employed to do coopers work in Woolwich-yard during the period of which you are speaking?

Mr. Dallas.—I submit to your lordship, it appears in this case that the employment is writing; the terms upon which they are to be employed appear from that writing; I object, therefore, to any evidence of that employment which is constituted by writing, unless it be the production of the writing itself.

Mr. Gibbs.—The words of the information are, that these persons were jointly employed at Woolwich, in the county of Kent, to perform certain coopers work in the dock-yard and rope-yard there, at and for certain prices; now, it does appear, that if they were employed, they were employed by writing; and as that writing has not been produced in such a form as that it can legally be received in evidence, we submit that no other evidence can be given of it, just as in any other case of contract, where you may charge the party by parole contract, if it appears there is a written contract you cannot give parole testimony of his having been employed according to the terms of the contract, because the written contract produced is not properly stamped; that contract may perhaps be stamped upon the payment of the penalty, but in its present state it cannot be produced.

Mr. Lawes.—The information professes to state the terms of his employment; he is to do such and such work, not only at certain prices, with reference to certain agreements, but also at certain times, "as he should from time to time be required."

Lord Ellenborough.—You may say a man is hired for a certain hire and reward; you may give in evidence that he was retained for hire, and that that hire depends upon the *quantum meruit*. I have not the whole of the information in my mind, but suppose they go on—*non liquet* that they acted upon the footing of this agreement of 1800; there may have been some parole agreement, and the old one departed from; I do not know how that is.

Mr. Garrow.—It will be competent for them, when we give evidence of certain employment, to check it, if they can show that it is not comprehended in the information; all we have taken upon ourselves to show is, that certain coopers work was done; that means, a quantity of coopers work, not certain specific coopers work.

Mr. Dallas.—I do not ground my objection merely upon what is stated upon the information with respect to the prices, but my objection is, that these persons were employed by the commissioners to do certain work for certain prices, at certain times.

Lord Ellenborough.—My only doubt is, whether you are not premature in this objection, till we see what employment they rest upon; at present this contract is laid out of the case.

Mr. Dallas.—They have given in evidence what they call a contract with Mary Gunter; for what purpose except to show that those were the prices?

Lord Ellenborough.—They give it in evidence, perhaps, with that view but that does not preclude them from other evidence; may it not have been that they afterwards discontinued acting upon the terms of that contract, and instituted a fresh agreement upon other terms by parole? I do not know how that will turn out.

Mr. Erskine.—To prevent a recurrence to this objection, it is better I should state distinctly at once the answer I have to give to it. It surprises me to hear Mr. Dallas say, that there is evidence of a transfer before the Court; there would have been if he had not made the objection; he would not allow the evidence to be read; consequently, there is no evidence of any written contract with Mary Gunter, or with themselves, through their guardians; the only way in which your lordship can have any evidence of such a contract is by the paper which, upon their objection, has been rejected; there is no evidence therefore of a written contract with government. Suppose I employ an upholsterer, under a contract, to furnish not my own house but an hospital, or something of that kind, chairs at such a price, tables at such a price, beds, and so on, at such and such prices; he put me up four beds, but makes my clerk certify that he has put up twelve; then I say he is a cheat, and I indict him for having procured my clerk to make a fraudulent certificate by which he was paid a sum greater than he had earned. He is equally a cheat, whether I contracted with him under a written contract or not; I am not charging him with a breach of the contract, I give in evidence against him his having put up only four beds in my house, and his procuring my servant to certify that he has put up twelve. Whether he agreed with me to put them up under a contract in writing, or by parole, would be foreign, independent, and collateral to this charge: besides that, there is now no evidence before your lordship of a contract.

Lord Ellenborough.—All this is perfectly premature: suppose he gave in an account as a man employed, will not that be evidence against him under such employment? the gravamen of the crime is delivering in false accounts.

Mr. Jervis (To Mr. Pering).—I think you say you were not acquainted with the persons of the two defendants Michael and John Hedges?—I never saw them.

But you know that persons of that name were employed to do coopers work in his majesty's dock-yard at Woolwich?—I did.

Lord *Ellenborough*.—Without using the word employed suppose you put it that they actually did the work.

Mr. *Dallas*.—Were they employed under any writing?—Yes, always almost.

Mr. *Dallas*.—Then I object to any evidence of employment in writing, except the writing itself.

Lord *Ellenborough*.—When you say they were employed always almost in writing, do you mean that they had particular directions from time to time to do particular jobs?—No; the only writing was, that when certain coopers work was wanted to be performed, a note was sent to them to come down and do it.

Mr. *Dallas*.—Do not you know, that though those notes were sent to do the particular work, there were certain prices at which the work was to be done, which prices were contained in a written contract?—There certainly was a contract.

Mr. *Jervis*.—Are you speaking of your own knowledge?—To say there was a contract I cannot; but the bills were always made out by what we termed a contract.

Mr. *Dallas*.—Does not your lordship think, from what appears now, it is incumbent upon them to produce the contract.

Lord *Ellenborough*.—Did you ever see any thing purporting to be a contract, or only do you suppose one to be in existence, from knowing that the transactions of the board are always in writing?—I only believe it; I never saw the contract.

Mr. *Jervis*.—But you know as a fact that Messrs. Michael and John Hedges acted as coopers in Woolwich-yard?—They frequently sent their servants down to Woolwich-yard by my direction.

Do you know that, from the month of March, 1800, and to July, 1801, they sent their workmen to do work as coopers in Woolwich yard?—They did repeatedly.

I believe you had several clerks under you?—I had.

Was Benjamin Pidcock one?—Yes.

Was John Smith Musgrove another?—He was.

Was William Constable another?—He was.

George Eden?—He was.

John Bradnock?—He was.

William Smith?—He was.

George Fensham?—He was.

Those persons were all clerks in your office of storekeeper?—They were.

When the coopers servants had done work in Woolwich-yard, did those persons sign any notes of the work which the cooper had done, or said he had done?—Yes.

Were your clerks in the habit of signing notes for work which was said to have been done by the coopers workmen?—They were.

Mr. *Dallas*.—The notes are evidence of that.

Mr. *Jervis*.—The notes will be produced; were those notes afterwards taken and entered into any workmanship-book at the clerk of

the checque's office?—That I cannot answer.

Were you afterwards employed in making out, or in certifying any particulars of the work supposed to have been done by the coopers, taken from the notes which had been signed by your own clerks?—My clerks were in examining, not in making out.

When your clerks had examined these particulars, were you in the habit of certifying the particulars which they had so examined?—When they had examined them, a fair certificate was made out from a rough one, that was before me for my signature.

Lord *Ellenborough*.—What do you call the rough one?—The rough account first made out; a copy of the whole made out first of all, to be examined and ticked at the different offices.

Mr. *Jervis*.—What was it to be examined with?—It was supposed to be examined with the original vouchers.

The original vouchers are the notes of which you have been speaking?—Yes.

You said that the fair certificate was brought to you for your signature; did you sign that certificate?—I did.

For what purpose?—To be transmitted to the Navy-office for the payment of the sum supposed to be delivered.

Was your signature to these certificates necessary, in order to enable the coopers to obtain payment for the work specified in them?—It was, as far as related to the stores; but the greater part of that was workmen's which did not come under my cognizance; it was under the cognizance of another person. It was then transmitted to the navy board, a voucher that the stores had been delivered.

Will you look at that certificate; it is 548l. 8s. 7d. I believe?—It is.

Be so good as to read the title of it; it says, "These are to certify, that Messrs. Michael and John Hedges have delivered the provisions following into his majesty's store here between the 11th of March and the 31st of August, 1800, per contracts, 8th of Aug. 1745, and 28th of February, 1782, and warrant of 2nd of June, 1800."

Mr. *Dallas*.—Now I think my objection arises.

Lord *Ellenborough*.—To be sure it does; this refers to those instruments, as the head of the whole; I am afraid you cannot do without producing them.

Mr. *Garrow*.—It does not refer to the price of the 2nd of June as contract; it refers to the others as contracts, and to that as a warrant.

Mr. *Erskine*.—Supposing that it is a contract, as his lordship thinks, it does not affect the crime for which the defendants are brought before the Court, whether the fraud was committed under a contract or not.

Lord *Ellenborough*.—It may, now independent of seeing the contract, whether a thing of that nature might not be authorized by the

very terms of that contract; now, that warrant of the 2nd of June, in order to being given in evidence, must be stamped.

Mr. *Erskine*.—I submit not; your lordship observes there are but two contracts adverted to there, and that paper negatives the idea of a third contract.

Lord *Ellenborough*.—I am clearly of opinion that is also a contract, for it is the only thing that substantively makes the defendants contractors.

Mr. *Erskine*.—Your lordship says, *non constat*, but that, if the contract were looked at, it might appear by that contract that no fraud had been committed upon government, but that they had the privilege of doing what this information alleges.

Lord *Ellenborough*.—I say it is fair to suppose that, or any thing else, in the contract.

Mr. *Erskine*.—If this were open to the objection your lordship has just thrown out, I should think it fatal to these proceedings; but I earnestly entreat your lordship to consider this case, and I think you will see that it cannot be open to that objection: there is, first of all, a contract with Mary Gunter, and upon the expiration of that contract, there is a contract with Young, Adams, and Corsen, but not a contract with them on their own account, but on account of these infants; these defendants afterwards do an act in consequence of their desiring to adopt this contract, made for their benefit whilst they were infants, but which they might either reject or adhere to; but in consequence of a requisition made by them, that the certificates applicable to that contract should, in future, be made out in their names, the commissioners of the navy agree that the certificates shall be made out in the names of the *cestui qui* trusts, and not in the names of the contracting parties; because, your lordship sees, that under the contract of 1782, these young men were the contracting parties, by their guardians; they were the *cestui qui* trusts under that contract: they afterwards accepted an employment under it; they send wares into the dock-yard under it; they give the manual labour of their servants under it; and they consent that their workmen shall work, and that they themselves shall furnish the materials upon the footing, not of any new contract, but of that contract to which they were parties, when infants, by the contracting of their guardians: then no question remains but this, whether that which was referred to as a warrant cannot be given in evidence without a stamp? The two contracts are already in evidence.

Lord *Ellenborough*.—The two contracts do not affect them but through the medium of this warrant; they are virtually recited and written into that warrant; it is just the same, for all purposes of consideration, as if, instead of referring to them, they had written their names immediately into this warrant: they are not contracting parties but through the medium of this, which bears the name of a

warrant, but which is a contract, substituting the *cestui qui* trusts in the stead of the trustees; I am afraid it is insuperable.

Mr. *Garrow*.—If your lordship thinks that this is an agreement, and ought to have an agreement stamp, we will go on with the rest of our case, and will take care to have it stamped before it is wanted; and when we give in evidence the contracts together by-and-by, we will prove that the attesting witness to the contract of 1782, with Young, Adams, and Corsen, is dead, and we then will prove his hand-writing.

Mr. *William Constable* sworn.—Examined by Mr. *Peake*.

I believe you were a clerk in the store-keeper's office, at Woolwich?—Yes.

During what period of time were you a clerk in that office?—From the year 1786 to the present period.

You were there then on the 29th of March, 1800?—I was.

Were the defendants, Messrs. Michael and John Hedges, during that time in the habit of doing work, or bringing materials to Woolwich-yard?—They were.

Did you, on the 29th of March, 1800, as storekeeper's clerk, sign any note of work, supposed to have been done by them or by their servants?—I did.

Was that note, and the other notes to which I shall examine you, to purport that that work had been done, and those materials delivered, on the days therein mentioned?—I understood that that was the purport of them.

[Notes, with the following dates, being shown to the witness, he proved the signatures to be his hand-writing, and they were read:

March 29, 1800.

April 25, 1800.

May 17, 1800.

August 2, 1800.

December 2, 1800.

January 15, 1801.

March 7, 1801.

June 27, 1801.

October 24, 1801.]

What were the names of the workmen who were employed by the defendants in the yard during this time; Gardiner, I believe, was one, and Havinden another?—I remember Havinden was one; I do not recollect the name of Gardiner.

By whom were those notes generally written?—By the cooper's foreman, I imagine.

You mean by Havinden and the other man, whoever he was, who acted in that situation?—Yes.

In what state were they brought to you; ready written, or were they written in your presence?—They were brought ready written.

Was that the usual course in which they were brought to you?—Always.

Did you make any inquiry, or any examination previous to your signing them, whether the work was done or not?—Not any.

Then you signed them as a matter of course, and when they were brought to you by the workmen employed by the defendants, without any inquiry whether the work had been done or not?—I inquired, when first a note of this kind was produced to me to be signed, what was I to do with it, and was informed that I was to enter it into the workmanship-book in the storekeeper's office, sign it, and return it to the cooper's man.

And having been told that that was the course of your office, you made no inquiry on any of these occasions, whether the work had been done or not?—No.

I hardly need ask you then, whether you knew that it had been done?—No, I did not.

Mr. William Constable cross-examined by Mr. Gibbs.

In what situation were you in the yard?—A clerk in the storekeeper's office.

Clerk in Mr. Fering's office?—Mr. Perring's then.

And you still continue a clerk there, do you not?—I do.

Havinden, you think, was the workman who did most of the business during your time?—I think he was.

You never saw either of the two Hedgeses?—I have seen one of them.

But not upon these occasions?—No.

Havinden, who did the work, brought to you an account of what he had stated to you he had done?—Yes.

You signed that account, and gave it back to him?—Yes.

And then you entered the work you had so signed in the workmanship-book?—I did.

Who are the other storekeeper's clerks?—Mr. Smith, Mr. Musgrove, Mr. Eden, Mr. Pidcock, Mr. William Smith, and Mr. Bradnock.

Do you remember any one but Havinden coming to you?—I cannot charge my memory as to the name or person.

Mr. William Constable re-examined by Mr. Peake.

Though you do not recollect the name or person of any other workman but Havinden, were any other persons occasionally there, in the same character as Havinden was?—As workmen I believe there were.

As workmen for Messrs. Hedges?—Yes.

Did any other person ever come to you with notes besides Havinden?—I cannot recollect whether any other person did or not.

My friend has asked you whether Messrs. Hedges ever brought these notes to you themselves? you said, no; have you occasionally seen Messrs. Hedges in the yard?—I have seen one of the Mr. Hedges in the yard, but I do not know his name.

Was that during the same time that Ha-

viden was there?—I cannot tell whether it was at the same time.

Did he appear to be there superintending the business?—I presume that he was.

Mr. John Smith Musgrove sworn.—Examined by Mr. Garrow.

I believe you were the third clerk in the office of storekeeper of Woolwich?—Yes.

And are still in the office?—Yes.

Were you in the course, when Messrs. Hedges servants brought notes to you to sign them for them?—I was.

When you had signed them, did you enter them in the workmanship-book?—I did.

And then you delivered the note, to whom?—To the man who gave it me.

Can you mention the names of some of the persons who brought notes from time to time?—I should recollect the men if I saw them: I recollect one of the names of Havinden.

Do you recollect a person of the name of Gardiner?—Not by name.

Do you know the Messrs. Hedges?—I do not.

[Notes, with the following dates, being shown to the witness, he proved the signatures to be his hand-writing, and they were read:

March 15, 1800.

April 5, 1800.

January 31, 1801.

May 16, 1801.

May 23, 1801.

September 5, 1801.

September 19, 1801.]

Before you entered upon the duty of signing these notes, did you make inquiry of any of your superiors what was your duty respecting them?—I was told by my superiors that was my duty.

Did you follow that, and enter these in the workmanship-book?—I did.

Upon your oath, did you know, or had any reason to suspect there was any fraud?—I had not; I did as I was told by my superiors.

You had no reason to doubt that all the charges were fairly made?—No.

Supposing you had thought your duty extended farther, had you any means of checking it further?—No, unless I had gone to check the work myself while it was in operation; but this was not my duty immediately: I did it for another person.

Mr. George Eden sworn.—Examined by Mr. Jervis.

You are clerk in the storekeeper's office at Woolwich?—I am.

Were you so in the month of March, 1801?—I was.

I believe you are still in that office?—I am.

[Notes, with the following dates, being shown to the witness, he proved the signatures to be his hand-writing, and they were read:

natures to be his hand-writing, and they were read :

April 10, 1800.
July 19, 1800.
October 2, 1800.
November 15, 1800.
February 14, 1801.
April 18, 1801.
April 25, 1801.
May 30, 1801.
June 13, 1801.
June 20, 1801.
August 8, 1801.
September 12, 1801.
November 14, 1801.]

Do you recollect the persons by whom those notes were brought, from time to time to you to sign?—I recollect but one man that brought them to me.

What was his name?—I have since heard his name was Havinden.

Do you mean to say they were brought only by one man, or only that you recollect but one man that brought them?—I do not recollect signing any notes but what were brought by one man.

Was he employed by the defendants, Messrs. Hedges?—He was.

Do you know the defendants?—Not personally.

On occasion of the first of these notes being brought to you to sign, did you ask any of your superior officers what it was your duty to do?—I inquired of the chief clerk; he desired me to enter them into the workmanship book, and sign them; since which time I have seen him enter them and sign them: and since that time I have entered and signed them myself in the same way.

Did you conceive that your duty was satisfied by signing the notes and entering them in the book, without examining to see whether the work described in the notes had been executed and properly done?—I certainly did, having seen the chief clerk sign them in the same way.

You did not suspect any fraud?—I did not, neither did I know that the bills were made out from those notes.

Mr. Benjamin Pidcock sworn.—Examined by Mr. Peake.

I believe you are a clerk in the storekeeper's office at Woolwich?—I was.

[Notes, with the following dates, being shown to the witness, he proved the signatures to be his hand-writing, and they were read:—

May 24, 1800.
June 7, 1800.
July 4, 1800.
February 7, 1801.
June 6, 1801.
August 23, 1801.
October 10, 1801.
November 7, 1801.]

Are those notes wholly written by you, or merely signed?—Merely signed.

Were they brought to you ready written?—They were.

By whom were they brought?—I think by a man of the name of Havinden.

Do you recollect whether they were all brought by Havinden?—I believe that all I signed were brought by Havinden.

I believe you signed them as a matter of course, without making inquiry when they were brought to you?—I did.

Did it occur to you that they were intended to be used for the purpose of fraud?—No, it did not.

Then, on the faith that they were to be made use of as fair vouchers, you signed them?—Yes.

Not knowing that the work had not been done, nor suspecting that it had not been done?—No.

Mr. William Smith sworn.—Examined by Mr. Garrow.

Were you a clerk in the storekeeper's office at Woolwich yard?—I was entered as a supernumerary clerk for the receipt of hemp, during the hemp season.

You were in the storekeeper's office?—I was.

It was not any part of your regular business to sign the vouchers of the cooper?—No.

Had you any directions from the first clerk?—I had directions when I should do it from the storekeeper's clerk.

Do you remember the workmen of Messrs. Hedges being employed in coopers work about the yard?—Yes, in the rope yard.

Did any of them, from time to time, bring you accounts of work supposed to have been done, and materials supposed to have been supplied, to be signed?—They did.

Do you know a man of the name of Gardiner?—I do not know their names.

You would know them if you were to see them?—I know but one; I should know him if I saw him.

Do you know what his name is?—I do not.

Did you, previous to certifying any of those notes, inquire what it was your duty to do with respect to such things if they were brought to you?—Mr. Bradnock directed me, when the coopers man should bring them, to enter them in the workmanship book, and sign them, and give them back to the man.

Did you enter and sign them?—I did.

[Notes, with the following dates, being shown to the witness, he proved the signatures to be his hand-writing, and they were read:

January 9, 1801.
February 21, 1801.
February 28, 1801.
March 7, 1801.
March 14, 1801.
March 21, 1801.]

April, 4, 1801.
 April, 11, 1801.
 July 4, 1801.
 July 11, 1801.
 October, 17, 1801.
 October 31, 1801.]

Did you sign those in pursuance of the instructions you had received, believing them to be faithful and just accounts of the work that had been done, and of the materials that had been furnished?—I did.

Had you any reason to suspect any thing wrong?—I thought it an incorrect mode of doing business, and mentioned it so to the chief clerk.

Had you any suspicion, that if inquiry was made, it would be proved not to have been done?—No, I had no suspicions of the kind.

Mr. John Bradnock sworn.—Examined by **Mr. Jervis.**

You were chief clerk in the storekeeper's office at Woolwich?—I was.

[Notes, with the following dates, being shown to the witness, he proved the signatures to be his hand-writing and they were read:

May 10, 1800.
 July 12, 1800.
 July 26, 1800.
 October 4, 1800.
 March 17, 1801.
 April 29, 1801.
 May 9, 1801.
 August 15, 1801.
 September 23, 1801.]

Do you recollect the persons by whom those notes were brought to you?—I cannot say.

Were they brought to you by one only, or by more than one?—I believe by different men.

Were those men, persons who were employed by the defendants as coopers?—They were.

Workmen employed by them?—Yes.

Were the notes brought to you ready written?—They were.

They were brought merely for signature?—Yes.

Do you know the names of either of those persons?—I do not know the names of either of them.

Do you think you should know their persons if you saw them again?—I think I should.

Mr. Erskine.—We have read a contract between the commissioners and Messrs. Young, Adams, and Corson, as the guardians of these young men, when infants, and your lordship being of opinion that the adoption of that contract, though in the shape of an order from the commissioners of the navy, consenting that they should adopt that contract, might be considered to be in itself a contract, it now comes stamped before the Court; but in order

to establish also the contract so adopted, we shall prove the death of the subscribing witness to that contract, and shall prove a hand-writing.

Mr. Richard Alexander Nelson, sworn.—Examined by **Mr. Garraw.**

Were you acquainted with a person of the name of Robert Gregson?—I was.

And with his manner of writing?—Yes.

Look at that; do you believe it to be his hand-writing?—I do.

Is he dead?—Yes.

Do you know him to be dead?—Yes, he has been dead several years.

Are you acquainted with the hand-writing of the commissioners?—I am.

Are those their signatures to that paper of the 2nd of June, 1800?—They are.

[Warrant read, dated 2nd June, 1800, signed C. Hope, J. Henslow, W. Rait, directed to the respective officers of his majesty's yard, Woolwich.]

Mr. Richard Pering, called again.—Examined by **Mr. Jervis.**

Be so good as to look at that certificate of the sum of 548*l.* 8*s.* 7*d.*, is that signed by you as storekeeper?—It is.

Are you acquainted with the hand-writing of Mr. Jeffery?—I am.

He is clerk of the cheque at Woolwich?—He was; he is not now.

Is that his signature?—It is.

Whose initials are J. B. and S. S.?—John Bradnock, first clerk in the storekeeper's office and Stephen Smith, chief clerk in the clerk-survey's office.

[Certificate read, dated Woolwich yard, September 11th, 1800, certifying that Messrs. Hedges had delivered stores to the amount of 548*l.* 8*s.* 7*d.*, between the 11th of May and the 30th of August, 1800.]

Mr. Jervis (to **Mr. Pering**).—Will you look at that certificate for 706*l.* 12*s.* 7*d.*; do you know the hand-writing of the different persons who have signed their initials to that certificate?—Yes, they are the initials of the six persons as signed the last.

There is another certificate for the sum of 904*l.* 9*s.* 4*d.*; was that signed by you, and the other officers in the yard, in the same manner?—Yes, it was.

[Certificate read, dated 27th of March, 1801, that Messrs. Hedges had delivered stores to the amount of 706*l.* 12*s.* 7*d.* between the 19th of September, 1800, and the 24th March, 1801.]

[Certificate read, dated Woolwich yard 23rd of July, 1801, that Messrs. Hedges had delivered stores to the amount of 904*l.* 9*s.* 4*d.* between the 31st of March and the 14th of July, 1801.]

I think you said you signed those certificates

without knowing either the one way or the other, whether the work had or had not been done?—I did not examine, seeing my chief clerk's initials to them, and the other clerks besides: sometimes I have examined some of the certificates, and always found them right when I did.

Is the fact so that you did not examine them?—I did not; I did not conceive it to be my duty; and it would be impossible for me to do it, and go through the rest of my duty.

Mr. Dallas.—Those certificates include the goods actually delivered, as well as work done?—They include both workmanship and goods furnished into the yard.

George Gainer, esq. sworn.—Examined by Mr. Peake.

I believe you succeeded the last witness, Mr. Pering, as store-keeper in Woolwich yard?—I did.

Have you any certificate which you signed as work done there?—That is my writing on this certificate.

I believe that is also signed by Mr. Jeffery, the clerk of the cheque?—Yes.

Did you particularly examine the items of which that account was composed, or did you sign it on the faith of the signatures of others?—I did not examine the items, I signed it on the faith of the signatures of the clerks in the office; on the faith, indeed, of the chief clerk, seeing his initials.

Who was he?—Mr. Bradnock; his initials are in the margin of the account.

Was Mr. Benjamin Pidcock a clerk in your office, during the time you were there?—He was.

Was John Smith Musgrove?—He was.

Was William Constable?—He was.

Was George Eden?—Yes.

Was John Bradnock?—Part of the time; he resigned while I was there.

Did he continue down to the time of signing that certificate?—Certainly, or his initials would not be to it.

William Smith?—He left the office while I was store-keeper.

Before that certificate was made out, or after?—I cannot say.

George Fensham?—He left the office at the time I was store-keeper.

George Gainer, esq., cross-examined by Mr. Gibbs.

I see a great many of the things contained in this certificate are goods delivered in by the contractors, some for materials found, and part for work performed?—It is so.

The prices are entered according to the different contracts, are they not?—Yes.

Those contracts remained with the board, and were entered in their books?—The original contracts remained with the board, and we had in the dock yard attested copies of them.

From them you make up the prices?—Yes, VOL. XXVIII.

a copy is left in the clerk of the cheque's office, and he furnishes us with a copy.

Those contracts fix the prices which you charge?—Yes; and sometimes warrants from the navy board, altering the prices.

If any variation is made by application from the contractors, it is put into writing by the commissioners?—They give directions to the officers in the dock yard to make such alterations as the commissioners think right.

The communication between the contractors and the commissioners is always in writing is it not?—That I do not know.

As far as you know it is?—I do not know what communication they have.

Mr. Erskine.—You do not mean to say, you know of any other contract between the commissioners of the navy and the two Hedgeses but that contract?—No.

Mr. Erskine.—No other contract ever existed between the commissioners of the navy and the Hedgeses but that which was entered into with their guardians, and afterwards adopted by them, upon an application to the commissioners of the navy: my lord, thinking that that adoption of the former contract ought to be stamped, it has been stamped and given in evidence.

Mr. Gibbs.—You are in the situation Mr. Pering did hold?—I succeeded Mr. Pering, but I do not hold that situation at present.

Mr. Pering is promoted to a better situation, is not he?—Yes.

[Certificate read, dated Woolwich yard, 19th December, 1801, that Messrs. Hedges had delivered stores to the amount of 1083*l*. 7*s*. 4*d*. between the 17th of August and the 11th of December, 1801.]

Mr. Erskine.—These certificates together amount to the sum I stated to your lordship: we shall prove that these certificates which have been read were, one after the other, presented by the defendants to the navy board; the money claimed under them; and that the money was paid.

Thomas Davis sworn.—Examined by Mr. Jervis.

I believe you are messenger at Woolwich yard?—Yes.

How long have you been in that situation?—Between six and seven years.

Have you been employed, in the course of your duty, to take the certificates of the persons who are employed there to them?—Yes.

Have you taken certificates, from time to time, from Woolwich yard to Messrs. Hedgeses house?—Yes, I believe I have always; except it was once or twice, when I was out.

Where do the Messrs. Hedges live?—In Rotherhithe; just opposite the church.

Do you know both of them?—I do.

When you have gone to their house with those certificates, have you seen them or either of them?—I generally have seen one of them.

Which of them?—I think the eldest.

Do you know which is Michael and which is John?—I do not.

All that you know then is, that you delivered these certificates to the elder of them?—Yes.

Have you always delivered them to him, or sometimes to one and sometimes to the other?—I have delivered them to the other once or twice.

Should you know the certificates if you were to see them?—Yes.

Look at those four certificates, are you able to say that you have taken such certificates as those from Woolwich yard to the house of the defendants, in Rotherhithe, between the month of March, 1800, and the month of December, 1801?—I am not certain to the time.

Are you able to say that you took such between the month of March, 1800, and the month of December 1801?—Yes.

Lord *Ellenborough*.—Have you a particular remembrance, so as to be able to swear that you delivered each of those to the defendants?—I cannot recollect the times, but I am sure I took those certificates.

Mr. *Jervis*.—You refer to those very certificates?—Yes, I can swear to the hand-writing; perhaps somebody else may have taken one sometimes; I cannot swear to these in particular.

Do you recollect having delivered certificates at the house of the defendants, between March 1800, and December 1801?—Yes.

Was it your course to take these certificates from the yard to the house of the defendants, and not to the Navy Board?—Yes.

You never took them to the Navy Board direct, did you?—No, never.

Thomas Davis cross-examined by Mr. *Lawes*.

Where was the house situate to which you took them?—In Rotherhithe.

In what street?—Opposite the church; I cannot tell the name of the street.

Which of the defendants lives in that house?—The oldest, I believe.

Only one of them?—I thought they both lived there.

Do not you know that the other defendant lives elsewhere?—No, I do not.

You believe that the eldest lives there?—I thought they both lived there.

Mr. *Jervis*.—Have you seen them both at that house?—Yes, I have seen them both together at that house when I delivered the certificates.

Mr. *Lawes*.—Who called for them again? They were left at one time, and called for at another; who called the second time?—I do not know; I never called for them, I only left them there; I suppose they took them to the Navy Office themselves.

Mr. *Muller* sworn.—Examined by Mr. *Peake*.

I believe you are a clerk in the office of the comptroller of the navy, in Somerset-place?—Yes.

Is it part of your business to receive the certificates for contracts which come from the dock-yard at Woolwich?—Yes.

Did those certificates come to you in the regular course of business for payment?—They came to me on the day that they were written upon them.

There is a memorandum of your own hand on them, which enables you to say they came to your office?—There is my hand-writing on them; I can swear to.

Do you recollect who brought them to you?—

They came in the regular way for payment.—They came to me to be registered for payment.

I believe there is a memorandum of a bill being passed?—There is, at the time of it.

Bills were made out upon the treasury in consequence of those certificates?—Yes.

Lord *Ellenborough*.—How do you know that?—All those bills I make out myself; present; I did not at that time, but I have since then.

Lord *Ellenborough*.—But whether they afterwards paid lies in another office?—

Mr. *Billingsly Cunningham* sworn.—Examined by Mr. *Peake*.

In what office are you?—Clerk to the receiver of fees in the Navy Office, at Somerset-place.

Have you any book there which enables you to say when any money was paid, or bills delivered out, in consequence of the certificates?—I have.

Do you keep those books?—I do.

Lord *Ellenborough*.—You are clerk to the treasurer's office?—I am clerk to the receiver of fees, and paymaster of contingencies.

Lord *Ellenborough*.—This comes under description of paymaster of contingencies?—Yes.

Mr. *Peake*.—Turn to the 20th of December 1800; do you find any entry there?—“Michael and John Hedges, for copper wares, 555*l.* 12*s.* 6*d.*”

That includes 548*l.* 8*s.* 7*d.* for the gross upon that certificate, and also the interest upon it to that time?—I believe it does; I only put down the gross amount.

Lord *Ellenborough*.—That does not run numerically to the certificate; is there anything to show how the difference arises?

Mr. *Jervis*.—Mr. Muller will be able to explain that.

Mr. *Peake*.—Was a bill to that amount delivered out on that day?—There was on the 20th of December.

To whom was it delivered?—To a person who signed his name Michael Hedges.

Will you turn to another of the 3rd of July 1801; what entry have you on that day?—“Michael and John Hedges, for copper wares, 715*l.* 18*s.*”

Is there any receipt written for that?—The same name to it, Michael Hedges.

Do you know the hand-writing of Mr. Michael Hedges?—I do not.

Look at the 3rd of November, 1801; what entry have you?—"Michael and John Hedges, for coopers' wares, 91*l*. 6*s*. 9*d*."

Does that appear to have been received by the same person?—Yes, Michael Hedges.

Refer to the 31st of March, 1802?—"Michael and John Hedges, coopers' wares, 1097*l*. 11*s*. 8*d*."

Does that appear to have been paid to Michael Hedges?—Yes; it is signed in the same way: they all appear to have been received by Michael Hedges.

You can speak, from that memorandum, to bills having been delivered out on that day?—They were.

The entry imports, that it is delivered to the person who signs his name?—It does.

You require the person who takes it to sign his name?—Yes.

Upon whom do you deliver a bill for this amount?—The treasurer of the navy.

Mr. Muller called again.

Mr. Peake.—Will you account for why the bill appears to be for a larger sum than the certificate amounts to?—There is the amount of the bill, and then interest is added for three months, which is the time the navy bill has to run.

Then, in fact, those particular sums which Mr. Cunningham has given to us, are compounded of the original sums and the interest?—Yes.

Mr. Walter Hutton sworn.—Examined by Mr. Jervis.

I understand you are a clerk in the office of the cashier of the navy?—Yes.

That is in the pay office, in Somerset-house?—Yes, it is.

Have you any navy bills which were passed to Michael and John Hedges?—I have; here is a bill for 555*l*. 12*s*. 6*d*. which was registered on the 13th of December, 1800, and became payable on the 12th of March, 1801.

Has that been paid?—It has; it was paid by me.

What is the indorsement on the back of that bill?—"For John and self, Michael Hedges."

[Bill read.]

[Another bill read, dated the 13th June, 1801, payable on the 27th of September, 1801, for 715*l*. 18*s*.; indorsed "For John and self, Michael Hedges."]

That bill has also been paid?—It has; they have all been paid.

[Another bill read, dated the 24th of October, 1801, payable on the 21st of January, 1802, for 916*l*. 6*s*. 9*d*.; indorsed "For Michael and self, John Hedges."]

[Another bill read, dated the 24th of March, 1802, payable on the 22nd of June, 1802, for 1097*l*. 11*s*. 8*d*.; indorsed "For John and self, Michael Hedges."]

Do you know of that bill also being paid?—That bill was not paid by me, but by the gentleman who succeeded me.

What is his name?—James Slade.

Is he here?—The check is here by which it was paid.

Upon whom was the check?—Upon Coutts and Company.

Do you happen to know whether those bills are made up of the principal sums, and the interest upon those principal sums?—They are.

And the amounts of the principal sums appear upon the face of the bills?—They do; the principal sum in the first bill is 548*l*. 8*s*. 7*d*.; the interest upon that, 7*l*. 3*s*. 11*d*.; the principal sum in the second, 706*l*. 12*s*. 7*d*. and the interest, 9*l*. 5*s*. 5*d*.; in the third bill the principal sum is 904*l*. 9*s*. 4*d*.; and the interest, 11*l*. 17*s*. 5*d*.; in the last, the principal sum is 1083*l*. 7*s*. 4*d*.; and the interest, 14*l*. 4*s*. 4*d*.

From what place did you bring those bills?—From the treasurer of the navy's office, the navy pay office.

Is that the proper repository for bills which have been paid?—It is.

Lord Ellenborough.—After that indorsement, payment must be presumed.

William Roberts sworn.—Examined by Mr. Erskine.

I believe you served your apprenticeship to Messrs. Young, Adams, and Corsen?—Part of it.

The defendants, I believe, were apprentices at the same time with you?—The younger Mr. Hedges was.

Did you afterwards, when they came of age, and took this business upon themselves, act under them?—Yes.

Did you attend the Dock-yard upon their account?—Yes.

Did you carry the notes, from time to time, to the storekeeper's clerk, containing an account of the work done?—I did.

Of course, when you had procured the signature, you conveyed it to Messrs. Hedges?—Yes.

Did you receive from them any instructions how you were to proceed on that service?—I did.

What directions did you receive from them?—I received a copy how to make out the account of the work.

What is become of that?—It is lost.

What were the directions they gave you, how you were to conduct yourself as representing them?—To get the work put into the workmanship book.

Were you to get the true account in the workmanship book, or how?—I had an order

from them, never to give in less than a hundred barrels at a time.

Though you should do but one?—Yes; there were seldom less than fifty done.

But you were never to put in less than a hundred?—Never less than a hundred.

Had you any direction from them with regard to masts?—Yes, I had.

What were those directions?—To charge a hundred and twenty hoops for each set of masts and bowsprit.

By set of masts you mean, main-mast, mizen-mast, and fore-mast?—Yes.

At an average, what number of hoops does it require for the masts of one vessel and bowsprit?—That varies much, according to the size of the vessel; I should suppose that a first-rate man of war would not take much more than fifty hoops.

How many might a frigate take?—Nothing near so many; I cannot say just exactly how many.

Supposing you were to hoop the masts of all the ships in the yard; some first, second, third, and fourth-rates; how many do you think each ship would take upon an average?—I should suppose less than forty.

Is that a thing that is generally known to persons engaged in work in the dock-yards?—I believe not.

You do not understand me; you have worked in a dock-yard, and been accustomed to hoop masts; you know, in general, what number of hoops it would require to hoop masts?—Yes.

What were Messrs. Hedges's directions to you to charge?—To charge all alike, a hundred and twenty.

Whatever rate ship it was?—Yes, a hundred and twenty hoops.

Did they put that down in writing for you?—They did, the same as that copy I brought forward; that is my hand-writing.

Is that a copy of what they made out for you?—Yes, the same as the original that is lost.

And they gave you these directions also besides, from time to time, did they?—They did.

Mr. Dallas.—When was that made?—I made it last week.

Mr. Dallas.—Then it cannot be read; when did you lose the original?—I missed it about six months since.

Mr. Garraw.—Do you perfectly remember what was contained in that which he gave you as the rule for your direction?—I do.

Mr. Garraw.—He may read that as his memorandum.

Lord Ellenborough.—No, that would be dangerous: he has refreshed his memory; he may tell us the contents from his memory.

Mr. Erskine.—He directed you to have a hundred and twenty hoops to ships, whatever were their ranks or rates?—Yes, to all alike.

The same for a frigate as for a first-rate?—Yes.

And, with regard to hooping barrels: were never to charge less than a hundred. Never less; if I went to the yard and hooped barrels, I was never to put down less than a hundred.

How many extra iron hoops did you generally use upon each barrel?—Two made of two wood.

How many were you directed to charge? Mr. Dallas.—I submit to your lordship whether my friend is at liberty to pursue the course; all this applies to a time which he not fall within the compass of the present charge.

Mr. Erskine.—I contend that I am permitted in order in this proof; for I stated it as an opening, thinking there might probably be such an objection as this, that I meant to show, that after the defendant had given these specific directions, and after he had acted upon these specific directions, he authorized him to convey the same directions. Gardiner, who acted upon them, and was to act upon them within the period stated in the information.

Lord Ellenborough.—I think, Mr. Dallas, it is, in this way, evidence; here are directions, which may be equivocal in their import; to show what the fact is, he says, I acted under them, and I communicated what I acted under his directions to the person who succeeded me.

Mr. Dallas.—If they stated it in the way of a charge, we should be prepared to meet it; if they do not charge it, and now go into a defence of it.

Lord Ellenborough.—They will not go into particulars of it, but to explain that he perfectly knew the import of the orders he gave and what was done under them; it is material to show the *quo animo*.

Mr. Erskine.—Suppose it was an indictment for murder, a poisoning on the first of June, cannot I show that the defendant previously gave orders to A. to procure poison?

Lord Ellenborough.—It is got at in this way, that he knew what the man did in consequence, and that he approved of what he did.

Mr. Erskine.—How many were you directed to charge of extra iron hoops on each barrel?—There were four made use of, two made of two wood; and there were two hundred hoops charged as extra.

Lord Ellenborough.—Were these hoops ever put on?—They were.

Mr. Erskine.—How many were you directed to charge above what you used?—There was always an extra charge made.

Mr. Dallas.—If they had charged the defendants with that, we could have disproved it; but they have not charged it, and I submit that they are not entitled to go into that.

Mr. Erskine.—I will state once more how I shape this evidence: this person is directed when he goes into the yard, when he does such and such works, to take the account

the storekeeper's clerk, and if he only puts thirty hoops on a ship's masts and bowsprit, he is to charge a hundred and twenty—and if he puts only so many hoops on a barrel, he is to charge so many more—that he is never to charge less than a hundred: he works upon this footing; and when he is about to retire, he is succeeded by another, who succeeds him within the scope of the period of this information. The defendants do not give these instructions immediately to Gardiner, though there are some that they did give, but they give these to this man to give Gardiner, and direct Gardiner to go on in the same manner that he and his predecessor——

Lord *Ellenborough*.—Have you not done all you had to do with him, to make him the channel of communication, that he gave the same orders to the other.

Mr. *Erskine*.—Did you act upon these orders?—I did.

Did you obtain notes from the storekeeper's clerk, according to these directions?

Lord *Ellenborough*.—That is carrying into effect the specific crime in that instance.

Mr. *Erskine*.—Did both the Mr. Hedges give you directions?—No, John Hedges.

Did you converse with the other upon it?—No, I did not.

Did you know from Michael, whether he knew what John had done?—I had reason to believe——

Mr. *Dallas*.—Do not tell us your reason to believe.

Mr. *Erskine*.—Did you receive any directions, when Gardiner came into their service, from Mr. Hedges, to communicate to him how he should proceed?—Gardiner went with me down to the yard to the work.

When did he go with you first?—To the best of my recollection it is more than four years ago.

Was he with you after March, 1800?—No.

When he went with you down to the yard, did you receive any instructions to communicate to him how he was to proceed?—No.

You do not attend to the question. Gardiner, you know, had not been in the same situation with you, how was he to know how to proceed after you were gone?—He saw me make out my accounts, and he made out his the same.

Do you know whether it was with the approbation of the Mr. Hedges that he pursued the same course he had directed you to pursue?—I rather think it was.

Was it possible that either Michael or John Hedges could suppose that all the materials were used that were in these notes?——

Mr. *Dallas*.—This is before the time of the present charge; he has said he had not directions to communicate instructions to Gardiner.

William Roberts cross-examined by Mr. *Dallas*.

When did you first go to work in Woolwich yard for Mr. Hedges?—When I had served about three years of my time.

Had Mr. Hedges the contract at that time?—He had.

Give me the date exactly when you went into the yard?—I do not know that I can exactly recollect the time.

How long did you work there?—I worked there, off and on, about two years and a half.

Were you the person who, during that two years and a half, conducted this business for Messrs. Hedges in Woolwich-yard?—Yes.

You took the notes of work, in the way you have described, to the storekeeper?—To the storekeeper's office.

You said, generally, you were the person employed in the yard by them at that time?—Yes, I was.

Was any body present when these directions you have spoken of were given to you?—Only John Hedges and me, at the time when he gave them me.

You have not the original paper?—No, I have not, I have lost it.

And you have lost it only six months ago?—I saw it about six months ago, but what is become of it now I cannot tell: I have made particular search after it, but cannot find it.

Lord *Ellenborough*.—When was this information filed?

Mr. *Bicknell*.—Easter term, last.

John Gardiner sworn.—Examined by Mr. *Garrow*.

You served your apprenticeship, did you not, to Young, Adams, and Corsen?—Yes.

You were out of your time in 1799?—I believe it was.

Did you live with Messrs. Hedges after they began the business?—Yes.

Were you at any time employed to do coopers work at Woolwich Yard?—Yes.

When did you first go there?—I do not exactly recollect.

What year was it in?—It was when I had served about three years of my time, I think.

Whom did you go with when you first went to work in the yard?—With Roberts.

How long did you continue in the employ of the yard?—Better than a twelvemonth.

What was the nature of the work you were employed in for the Hedges?—In coopering pitch and tar barrels, and putting hoops upon masts.

When you did any work at the yard, in what manner did you make your charge for it?—Just in what manner I liked—I had the liberty of charging what I liked, and had no body to control me.

I want to know the manner of charging; in

what manner did you make out your account, and what did you do with it when you had made it out?—I made it out, and took it into the storekeeper's office in the dock-yard.

Were you, during any part of the time that you worked at the yard, paid for your labour by the Messrs. Hedges?—Yes.

When you carried your account to the storekeeper's office, what was done with it there?—It was booked in the workmanship book.

And what was done with the paper which you carried to the office?—It was signed by the clerk, who booked it, and then it was taken home by me to Mr. Hedges.

Did you deliver these notes to one of the Mr. Hedgeses in particular, or occasionally to both?—To one in particular.

Which did you deliver them to?—To John Hedges.

As you have told me you had no control over the manner of making your charge, state how you did it; did you charge only for the work you did, and the materials which were actually employed, or for more?—For more a considerable deal.

In what proportion did you charge more than you ought to have charged?—I cannot say how much.

Supposing you had used fifty hoops, how many did you put down?—We used in general to charge a hundred barrels; if I used ever so few hoops, I used to charge a hundred barrels.

How often did you take these accounts to the office, and afterwards carry them to your master?—According to what works were wanted there; I used to go once a week with my notes.

In what manner were you furnished from Messrs. Hedges with hoops?—They were sent down by a waterman, by a wherry, to the yard.

When you delivered these notes, charging a hundred when you had used a much smaller quantity, were you paid for your labour according to the number you were supposed to have employed?—I was.

Were you paid by the day or by your work?—By the work.

Then when you charged a hundred as having been put upon barrels, when you used a much smaller quantity, were you paid by your master as if you had used the whole number?—I was paid for the workmanship as if I had used so many; and sometimes I had not that quantity for use.

Did it ever happen to you, that whilst you were at the yard, you were obliged to stand still for want of the materials to employ you?—Frequently.

Did you ever represent that to your masters?—I have often told him of it.

Which of them?—John in particular.

Did you, upon some occasions, mention it to Michael?—I did sometimes.

What answer was made upon those occa-

sions?—They said they had been down, and could not get them.

What did you do with respect to your day?—I was to keep on charging.

Lord *Ellenborough*.—Did they tell you to keep on charging?—They were perfectly acquainted with it. My master knew I kept on charging, and my master knew I had materials to go on with.

Lord *Ellenborough*.—Were you bringing back notes at the time when you were standing still for materials as if you had been at work?—Equally the same.

Mr. *Garrow*.—Though they knew you were not doing that work, because you had hoops to put on, they still paid you when you charged for your labour, as if you had been at full work, and with full materials?—Equally the same.

And this happened with respect to both of them occasionally?—Yes.

Was it possible, when they saw their charges you made for hoops and other materials, that they must not have known a great variety of instances, that such had been furnished then, and that you could not have employed such a number of materials at that time?—I have been told by John Hedges that the contract would not be worth so much if it was not for the overcharge.

In the accounts which you rendered at the storekeeper's office, and which they put in the workmanship book, there were no quantities; there were no prices there.

In what manner was the price to be paid you for your labour, to be estimated?—I suppose I produce one of those tickets, where there are stated to have been put upon two hundred barrels, who took out the money from the notes?—Mr. John Hedges.

And who paid you, upon the footing of a calculation?—Mr. Michael Hedges.

Did he see the notes too?—I cannot say that.

What had Michael Hedges to render you your pay by except the calculation of Hedges made for you?—I do not know; I used to pay me whatever John Hedges made for me.

And he booked for you, in a great number of instances, quantities of materials as which they both knew perfectly well, and never been sent to the yard?—He certainly did.

When you complained, in some instances that you had not hoops, I think you said they replied they were going to weigh off more?—Yes.

Weigh off is buying from the wheel dealers? their stock was out and they were going to get more?—Yes.

How long have you at times, stood still for want of hoops to employ you?—Sometimes three or four days.

Did you still keep on charging as against the government, and receiving your pay the same?

as if you had been in full work?—Yes, if there was any thing to do in the yard.

So that if you coopered one barrel, you charged the same as if you were in full work, and employed full materials?—Yes.

Now, as the defendants must have known that they were paying you more than you had earned, did they at anytime say what was their reason for keeping your pay full up?—They never assigned any reason for that.

But you did not find your pay full off?—No.

We have been speaking at present of tar barrels; were you employed in hoopsing masts?—Yes.

How did you make your charges for them?—We charged so many hoops to a set of masts.

How many did you charge for a set?—A hundred and twenty.

What were the sort of vessels you usually put hoops on the masts of?—Of all sizes; the hoops generally are on larger masts.

Suppose you had one day a seventy-four gun ship to hoop, and the next day a frigate, did you charge a hundred and twenty hoops for each of them?—Yes.

How many might you actually employ out of the hundred and twenty that were charged?—To the best of my knowledge about forty, upon a set of masts.

Did you with respect to masts, as with respect to barrels, charge when you had no hoops to put upon them?—No, only when there were some to do.

But, when you had, you charged a hundred and twenty for a set of masts, be the ship great or small, though you did not employ above forty?—Yes, not above forty, I think.

Could any man who had ever been employed in a dock yard to hoop masts fail to know that a hundred and twenty was a great many more than ever were employed upon vessels of that sort?—They have done it themselves when I was a boy; when I was a boy I have assisted Mr. John Hedges in doing that work.

Was it possible for any man that had a quarter of a year's experience in putting hoops upon masts, not to have known that a hundred and twenty hoops were a great many more than could fairly be charged?—It was not possible.

When you carried in the charges as having been transcribed into the workmanship book, did the defendant ever object to you as having charged too many?—Never.

Look at these notes, are any of them in your hand-writing?—Many of them are my hand-writing.

Mr. Garrow.—All these notes stated in the first count are the witness's writing.

Mr. Louten.—They are from April 1800 to August, 1801.

Gardiner.—This, of the 2nd of October, 1800, is the hand-writing of Mr. John Hedges; "890 tar barrels, trimmed and set to rights; 5376 large wood hoops on tar casks."

Mr. Gallow.—Is all that one note of John Hedges's hand-writing?—It is.

Mr. Garrow.—Does that note written by John Hedges, import to be for labour which you are supposed to have employed?—Yes.

Had you done that work, or represented to him that you had done it; or did he, in fact, know that you had not done what is charged?—I had done but a very small part of it.

Did he know very well that the charge you made exceeded the work you had actually done?—He did.

Had he furnished you with hoops enough to do as much as is charged?—Not near so much.

Look at this note, dated the 4th of July, 1800, "1,600 hoops, on press-barrels;" were these 1,600 hoops set on press-barrels, or what proportion of them only?—There might be nearly all the hoops set on.

The next charge is, 150 new heads on press barrels; were there any new heads?—Not any.

One hundred and fifty barrels cross-barred and headed; were any of these done?—Yes.

How many?—I believe they were all.

When you had new heads for the press-barrels, where did you get them?—I never had any new heads for them.

If any had been furnished would they have been furnished in the shape of heads, or made in the yard?—There were not any new heads required; the old heads that came out were coopered by me, and put in again.

Do you mean to confine yourself to the one hundred and fifty, or do you mean to say that during the whole time you were there no new heads were furnished?—No new heads were furnished.

Then, if there are any in these bills, they are all falsely charged?—They are.

Did either of the Mr. Hedges make any objection to your charging things that were not furnished?—It was by his direction I knew how to charge them at first.

What was that direction?—A note similar to this.

A note similar to what?—To this I have in my hand.

Lord Ellenborough.—Where did you get that note?—Mr. Hedges made it out for me to make the charge by.

Mr. Garrow.—Was it by way of pattern to you?—Yes.

So that, whenever you did any to press-barrels, you were to charge them according to the pattern which he gave you?—Yes.

And the pattern directed you to charge new heads to them?—Yes.

Though you never did employ one single new head to them?—Never one.

How came you to charge a hundred and twenty hoops for a set of masts?—By directions from Mr. Hedges; the first set of masts I ever hoopsed I had directions from him, to

the best of my knowledge, how to charge for them.

Did you constantly, as long as you were employed, charge a hundred and twenty hoops for each set of masts?—I did.

And did you ever employ so many?—Never.

Could you properly have employed half the number?—I could not.

There are certain parts of the masts, I suppose, in which they must be placed, and not in others?—Yes.

So that, whenever your master saw a set of masts charged as a hundred and twenty, he must have known that that was a fraud, at least of one-half?—He must.

Did these gentlemen keep books?—Yes.

They were in a large way of business, were they not?—Yes; sometimes they employed ten or a dozen men at home.

When materials were given out to the workmen, either in the house, or for out-door business, were they regularly booked?—I cannot tell how that was.

You succeeded Roberts?—Yes.

You left Mr. Hedges at last?—Yes.

Who was called in, and directed to succeed you in the public work?—Havinden was called in, and directed to succeed me, in less than ten minutes after.

You succeeded Roberts, and Havinden was to succeed you?—Yes.

Mr. Garrow.—Mr. Lowten, show the witness all the notes stated in the first count. Your lordship observes that, as far as we have gone at present, these notes are carried to the office of the storekeeper, there entered, and then they are delivered back to the witness, and he carries them to his master; they are carried afterwards, with the abstract which forms the basis of the rough draft of the certificate which your lordship has had put in.

Mr. Gibbs.—I take it, in the course of things, it must be so; you must have your vouchers for the bills.

Mr. Lowten.—Here is another note of John Hedges' writing, dated the 7th of March, 1801—"3896 tar barrels, bunged, filled, wathered, &c.; 5584 wood hoops on tar barrels."

Mr. Garrow.—Is that an overcharge, like all the rest?—Yes.

Does that import to be a charge of work done, and materials supposed to be used by you?—These tar barrels were neutral tar; they were bunged and drawn—the water drawn from the tar.

Was the work charged there fairly done, or is that an overcharge?—The hoops I believe to be, part of them, an overcharge, but the number of barrels bunged to be right.

Lord Ellenborough.—Are half of the hoops an overcharge?—At least half of it is an overcharge.

John Gardiner cross-examined by Mr. Gibbs.

You were paid according to the labour that

it appeared, from these notes, you had performed upon the materials stated in these notes to be provided?—Yes.

And John Hedges made out, from the notes brought to him, an account of your labour?—Yes.

And then he entered in the book what you were to receive?—Yes.

Then Michael Hedges, seeing by John Hedges's account the sum total that you were to receive, paid you that money, upon the faith of John Hedges having so entered it?—Yes.

With respect to the materials you used, you went to Metars. Hedges's yard whenever you pleased, and took what materials you wanted, did not you?—I went and asked for materials; they would say they would send them down, perhaps to-morrow; and they might or might not.

You left no account in writing of what you wanted to have, did you?—No, never but by word of mouth; I most frequently used to see either master John or master Michael when I wanted any thing.

Did not you receive them from their yard, and go with them to the dock-yard or rope-yard sometimes?—Sometimes I have gone myself with the things in the boat.

And carried them, to apply about the work that you wanted?—Yes.

Did you work at either of the other three yards at which they had a contract?—I worked at Deptford and Woolwich, but no where else.

Were the other two yards they had contracts for, Chatham and Sheerness?—That was not in my time.

There used to be no entry made of what was taken out, did there?—I believe not.

And sometimes you say, you went in a boat with materials yourself?—Yes.

John Gardiner re-examined by Mr. Garrow.

Sometimes, in a morning, you say you took a few in a boat?—Yes.

I suppose you took that opportunity of riding rather than walking?—Yes.

You never went to help, yourself?—No.

And when you asked for them, sometimes Mr. Michael Hedges and sometimes Mr. John Hedges told you they would send them to-morrow; and sometimes they did not come for two or three days?—I have sometimes been as long as that waiting, but I have always taken a note home.

When you have been standing still for three or four days, it broke no squares between your master and you, if you carried a note home?—No.

Lord Ellenborough.—Have you ever had any conversation with Michael Hedges about the manner in which you were to make out your account?—No.

Mr. Garrow.—Is there any thing from which you knew that Michael Hedges knew that charges were made of larger quantities

than were actually employed?—I can tell no more than that he must know more of the thing was charged than what was used.

Lord *Ellenborough*.—From what circumstances?—From my being about the place, and standing still for hoops.

Lord *Ellenborough*.—Did Michael Hedges know you were at a stand for want of hoops; and did he know that a charge was made for hoops during that time?—I cannot say; but I think he must know, because he paid me; he was paying me for what I charged.

Lord *Ellenborough*.—But how do you know, without having the documents here, at what particular time it was you were paid when standing still, when Michael Hedges knew you were standing still?—He paid me whatever I charged, whether I stood still or not.

Mr. *Garrow*.—You said he frequently paid you for notes, when he knew you were standing still?—Yes, sometimes I stood still at the beginning, sometimes at the latter end of the week.

And yet when you went home with notes upon government at the end of the week, though you had been standing still, he paid you as if you had been at work?—Yes.

Mr. *John Jeffery* sworn.—Examined by Mr. *Garrow*.

What is your situation?—Clerk of the cheque.

We observe, the manner of doing business was, for the contractor to make a note, charging his work; that was carried to the store-keeper, vouched, carried back to the contractor, and then was found again in the office; how does it come back again into the office?—I understand——

Mr. *Garrow*.—If you do not know it of your own knowledge, let somebody else stand up.

Mr. *Thomas Soley* sworn.—Examined by Mr. *Garrow*.

What is your situation?—Third clerk to the clerk of the cheque in the cheque-office, Woolwich-yard.

Explain how these vouchers come into your hands?—They are either delivered to me by Mr. John Hedges, Havinden his man, or put upon my desk; or once, I believe, left at my lodging.

Are they brought as your materials, from which you are to form that certificate, by which he is to get paid?—Yes.

He could not get his certificate made out without the production of these at your office?—No; I would not make them out without.

Mr. *Laws*.—You do not know who brought them?—I cannot say; they were delivered into my hand.

Mr. *Garrow*.—Do you know whose hand-writing that is? Do you know John Hedges's hand-writing?—I do not.

Henry Havinden sworn.—Examined by Mr. *Jervis*.

I believe you were apprentice with Young, Adams, and Corsen?—I was.

Did you afterwards enter into the service of the two defendants?—I did.

When did you enter into their service?—Sometime in the year 1800; I had just come from the West Indies.

Was it the latter end of the year 1800?—I think it was.

Were Michael and John Hedges carrying on trade on their own account at that time?—Yes.

Were they men grown at that time?—Yes; I and John Hedges were both bound apprentices on the same day.

About how long had you been out of your apprenticeship at the time you came to live with Messrs. Hedges?—It might be five, six, or seven years.

How long did you continue in their service?—I continued till June or July, 1802.

Do you know the last witness, Gardiner?—Perfectly.

Did you succeed him in any employment in the dock-yard?—I did.

When was that?—In January 1801, I think.

Upon the occasion of your succeeding him in the employment in the dock-yard, did you receive any directions from any body, and what were those directions?—One Monday, as I was going to the shop, Mr. John Hedges came out, and called me into the counting-house; he asked me if I had any objection to take my old place again in the yard.

Who was present at that time?—Nobody at all; John Gardiner came to me before Mr. Hedges; and said, "Harry, Mr. Hedges wants to speak with you; go in."

Lord *Ellenborough*.—Had you been in that place before?—Yes I had, whilst I was apprentice; the last part of my time.

Mr. *Jervis*.—What passed between Mr. John Hedges and you?—He told me there was work to do in Deptford-yard, would I go and do it or no—I said yes.

Did he say any thing about any notes?—Not at that time.

Confine yourself to Woolwich-yard: did you afterwards, in consequence of any directions you had received from the defendants, or either of them, go to work in Woolwich-yard?—I did.

When did you go to work there?—It was very soon after; I cannot directly say when it was.

Did you make out any notes of the work you had done?—I did.

By whose directions did you make out those notes?—When I told Mr. Hedges about what I had been doing there, he showed me one of Gardiner's notes, and told me I must make them out in the same form as they were, whatever I had done.

Did you observe the manner in which Gardiner had made his charge in that note?—Yes.

What passed between Mr. Hedges and you, upon the manner of making the charge?—Nothing in particular; any farther than he showed me the note, and said I was to make it out in the same manner as that was made out.

Did you, in consequence of those directions, make out any notes of the work you were doing, from time to time, in Woolwich-yard?—Yes.

Did you charge the actual amount of the work you had performed or more?—I always charged more.

In what proportion?—I cannot say exactly; when I wanted a good week's work, I put down accordingly.

Lord *Ellenborough*.—Do you mean, that when you wanted wages for a good week's work, you put down accordingly for them, and that your wages were proportionable to what you charged?—Yes.

Mr. *Jervis*.—Were the hoops you used sent by water to Woolwich-yard from the manufactory of the defendants?—Yes.

In the notes that you made out for work, when you wanted a good week's work, as you call it, did you only charge the actual number of hoops that were sent out from Mr. Hedges manufactory to you, or more than that number?—I never took any exact account of the number of hoops at all.

How did you charge them?—I charged them just according as it came into my own head.

In what proportion did you generally charge for more hoops than you had used?—I never made any proportion at all about it.

Did you never charge less than a particular quantity; for instance, a hundred?—No, I never was particular in the charge at all.

Did you charge twice as many as you had used?—Sometimes.

I am asking as to the hoops upon barrels?—Yes.

What was the rule of your charge as to hoops upon masts; did you charge the actual number you used, or more?—We used sometimes to charge when there were none at all.

Did you charge for hoops upon masts when none were sent down?—Yes, when I had not any.

When you had none from their manufactory, you still charged as if you had?—I always had hoops for asking for, whenever I asked for them from my masters.

But sometimes you charged for them when you had not any, and had not asked for them?—I had not asked for any from them; but they might not know that there were none there.

Did you charge the actual amount of press barrels that you had hooped, or did you charge more?—I always charged more; I do not know that I ever charged the exact number; not above once or twice.

Filling and bunging was part of the work you did, I believe?—No, I never did any of that.

Did you ever make any charges for filling and bunging?—No; I never did.

I believe you wrote these notes yourself. I did.

When you got these notes signed by the storekeeper's clerks, what did you do with them?—I carried them home to my master.

Was the calculation of the sum you were to receive for wages made upon the charges contained in the notes?—Always.

And were you paid in that proportion?—I was always paid according to the number of barrels—so much for tar barrels, so much for press barrels, and so on.

Must your masters have known you had hoops for masts, when you had none?—I cannot say whether they did or no; where I applied for hoops, or any thing of that sort, they always gave them me.

You say, in some instances, you had none and yet still you charged for hooping masts?—Yes.

When you brought in those charges, did they ever state that they had not sent any hoops?—No.

Which of the defendants generally paid you?—Michael Hedges.

Was he resident on the premises?—He was.

Therefore he must know what hoops were sent off from the premises?—Where he wanted any hoops he used to send them me.

Being upon the premises, he must be known whether hoops were sent away or not?—I should think so; I used to be there when they were shipped off very often.

Your master made out what you called abstract of the notes you had brought in?—Yes.

You said Michael Hedges paid you for wages?—Yes.

What was the amount of the wages you earned weekly in this business?—Sometimes I used to get eight or nine pounds a week.

You were, I believe, no more than a common cooper?—Yes.

Has not Mr. Hedges several times paid you to the amount of ten pounds a week?—He has, and better—one or two weeks, I believe, went over ten pounds; I cannot say how many weeks, but it did several times.

Could a labouring cooper, such as you were, have earned that by the work you actually performed?—No, not if you come to the point of labour.

Nor half the money, I believe?—No.

What could you earn now?—There are some coopers in the victualling-office who can earn better than three or four pounds a week.

What could you have earned by doing labour?—I always reckon my week's work at work at the block, as good as three pounds.

Did the defendants know that no workman could earn more than three pounds a week?—They must have known what I could earn, for I had served my time to them.

Look at these abstracts ; are they made out by John Hedges from the notes you had taken to him, signed by the storekeeper's clerks?—They are.

Are both these abstracts the hand-writing of the defendant, John Hedges?—They are.

Did you take either of these abstracts, by order of the defendant, John Hedges, to the clerk of the cheque's-office, in Woolwich-yard?—I think I did one of them.

What did you take it there for?—For the bill to be made out—I took it to Mr.——

Lord *Ellenborough*.—Does that tally with any of the certificates?

Mr. *Louten*.—This is merely an account of the different materials that had been provided by these gentlemen for the yard.

Mr. *Jervis*.—I understood they tallied with two of the certificates. Look at the note of the 7th of March, 1801, signed by Constable —whose hand-writing is the body of that note?—Mr. John Hedges.

Do you recollect the occasion upon which he wrote that?—It was one Saturday he came down to the Jolly Shipwright, a public house, and told me there had been some work Gardiner had done, and Gardiner had not got a note for that work, but he had then got a warrant for doing it: he wrote that in my presence; he gave it me, and desired me to take it in and get it signed, which I did immediately.

Was the work specified in that note actually performed?—I do not know—I did not belong to him at that time.

Lord *Ellenborough*.—It related to Gardiner ---he should be brought to state whether it is true or false.

Mr. *Jervis*.—Are you acquainted with John Fensham's hand-writing?—Not much.

Whose hand-writing is that note?—The body of the note is my hand-writing; it is all my hand-writing but the name.

When you had written notes in that way, did you take them to the clerks to sign?—Yes, always.

Did you take these notes to Mr. Fensham to sign?—Yes.

[Notes dated the 21st of November, 1801, and the 5th of December, 1801, read.]

Were there any such quantities used as are stated in that paper of the 5th of December, which is in your hand-writing, "296 barrels hooped with two iron and two wood hoops on each, and 396 ditto trimmed and set to rights"?—No, there were not.

Do you recollect, at any time recently, before the discovery of this fraud, having any conversation with the defendants about their then bill?—No farther than one day they asked me whether Mr. Soley had said any thing concerning the bill—I told them no; they said they hoped there would be no dust about it, but which of them said any thing about it I cannot positively say.

When one of the defendants said he hoped

there would be no dust about it, were they both together?—They were.

When was this?—It was some time before it was discovered that there were any overcharges made: nothing more passed between us then.

Lord *Ellenborough*.—He said he hoped there would be no dust about it—what was the thing referred to?—He said no more but the bill was so long in being made out.

Mr. *Jervis*.—There was a large bill due then?—Yes there was.

Lord *Ellenborough*.—The bill in payment?—Yes.

Henry Havinden cross-examined by
Mr. *Dallas*.

I think you said you entered into the service of Messrs. Hedges in 1800?—Yes.

Can you tell me at what time of the year?—I think some time in September.

And you continued there till June 1803?—I continued with them till this disturbance.

And, during all that time, the business of this yard was transacted by you?—No; I did not do the business of the yard till January, 1801.

And continued it how long?—Till there was a dust about the charge.

How long were you employed in the service of Messrs. Hedges altogether in conducting the business in Woolwich-yard?—I cannot positively say; I went to do the work of the yard in January, and did not leave it till this fraud was found out, and the dust was about it.

In which yards?—Deptford, Woolwich, and Chatham.

Did you go to Sheerness too?—Once, but I never did any thing there.

I think you said Mr. John Hedges asked you if you had any objection to take your old place again; and in consequence of that, you went and worked in Deptford-yard?—Yes.

I believe you employed a number of men in the yard under you?—I did; when there was more work than I could do I got men to do it.

Did you pay these men yourself?—I always did.

So, if you received eight or nine pounds a week, you paid the men you employed under you?—I always did.

And not Messrs. Hedges pay them?—Yes.

Mr. *Jervis*.—Have you ever been paid by the defendants to the amount of eight or nine pounds, or more, per week, for work you charged as having done yourself, when you have not employed men under you?—Yes, I have frequently.

Thomas Munns sworn.—Examined by
Mr. *Peake*.

When did you go to work for Messrs. Hedges?—In the year 1801.

Was it the latter end of that year?—I believe it was.

How long were you with them before you

were sent to Woolwich-yard?—About a week or a fortnight.

Who took you to Woolwich-yard?—Henry Havinden.

Did Messrs. Hedges know you went there with Havinden?—Yes.

Who paid you?—Henry Havinden.

How long did you continue at Woolwich?—about six weeks, I suppose, or two months. Were you there all the time?—No, sometimes I was at Deptford.

How often in the time might you be absent from Woolwich?—I cannot say.

Were you absent for any length of time?—Two or three days.

Were you there often enough to know what business was going on?—Yes.

During that time, how many hoops do you suppose were fixed on ships masts?—I never saw any.

Can you take upon you to say whether any were fixed or not?—It is out of my power to say; I never saw any.

Is it a work of that kind that you must have seen it if it had been going on?—I think I must.

Now, heading press barrels, were you employed in that?—No.

Were any new heads put in?—Not to my knowledge.

Were any heads taken out and put in again in that time?—Not to my knowledge.

Were any Stockholm barrels hooped in that time?—I believe there were.

Were there many?—I cannot justly say.

Were any tar barrels trimmed and set to rights during that time?—There were a great many hooped, but none trimmed.

If any of those things, namely, setting hoops on ships masts, and the other things I have mentioned, had been done during that time, must you not have seen them?—I think I must.

Have you any doubt that no such things were done?—I do not think they were.

You told me some hoops were put on press barrels?—Yes.

How many do you suppose?—The best part of a hundred.

Were any press barrels cross-barred?—Yes.

How many?—As many as there were hooped.

Were any extra iron hoops put on tar and pitch barrels?—Yes, at the dock-yard.

How many do you suppose of them might have been done?—I suppose about two thousand tar barrels, and we might have done a thousand pitch barrels.

If any more of these things had been done, or any of those other things which you say you saw nothing of had been done, must you not have seen them, from the nature of your employment?—Yes.

Have you any doubt that no such things were done?—I think they were not done.

Where did you get the hoops from?—They were sent from Mr. Hedges.

Wree all the hoops which came from Mr. Hedges employed in this business?—Yes.

Mr. Erskine.—I now mean to finish account of this work, by showing, by the who were in the dock-yard and knew the ships were there, that the ships charged these certificates, had no such work upon them.

Lord Ellenborough.—The last witness nothing at all, he is too indistinct.

Mr. Erskine.—We have done enough to throw the onus upon them, but we will put this farther circumstance.

Mr. Stephen Tadd, sworn.—Examined by Mr. Erskine.

What is your situation in Woolwich?—Master mast-maker.

Do you know whether the use of new hoops upon the masts of ships in Woolwich yard was discontinued at any time?—Yes, the 26th of April, 1800, they were.

I believe that was by an order of the board?—Yes.

Do you know that since that time new hoops have been used to new masts?—No one.

Do you remember the ships called the Medusa, the Abundance, the La Prevoyante, the William, the Serapia, the Empress, the Alarm, and the Plantagenet?—Yes.

Were the masts of those ships in that wooden hooped?—There was not a hoop on any one of them.

Mr. Erskine.—These are charged notes in 1801: was the La Prevoyante masted at Woolwich?—No, she was masted at Deptford, and came into Woolwich to receive her stores—the others were masted at Woolwich, but had no wooden hoops.

About what number of hoops do you think from your general knowledge as master mast-maker, would have been necessary for masting the masts of all the ships that had wooden hoops in that dock-yard between the 1st of March 1800, and the December of the next year?—Not more than two hundred.

If that be the case, and these other ships could not have been put upon the other ships I have mentioned, they must have been put upon the Pandora, the Princess Charlotte, the Alliance, the Amaranthe, and the Perseus?—Yes.

How many hoops were put upon the masts of the Amaranthe and the Perseus?—There were eighteen upon the Amaranthe and thirty-six upon the Perseus.

Mr. Erskine.—The defendants have charged to the Amaranthe one hundred and eighty, and the Perseus one hundred and sixty—would it have been possible to have found room on the masts of these ships to have put on those hoops?—They could not.

What sized ship is the Perseus?—A twenty-gun ship.

Could any man who had served an apprenticeship to a cooper, and had worked in a

dock yard, see one hundred and sixty hoops charged to have been put upon the masts of that ship, without knowing it was impossible they should have been?—I should think so.

Suppose you were to see a paper in which one hundred and sixty hoops were charged to have been put upon the three masts of the *Perseus*, what would occur to you upon that?—I should think they never could have put them on; there was not woolding sufficient: the woolding is the rope that goes round the mast.

It is a thing perfectly notorious to every cooper that is accustomed to hoop masts, that eighteen or twenty would be sufficient for such a ship?—It is.

Could a cooper, used to work in dock yards, believe that it would require one hundred and sixty hoops to hoop the masts of such a vessel as the *Perseus*?—No, he could not.

Mr. *Erskine*.—Two thousand two hundred and thirty hoops are charged within the scope of the information to have been used, how many hoops have been made use of in the dock-yard within the periods I before asked you to—from 11th of March 1800, to the month of December 1801?—There could not be above two hundred and thirty, or two hundred and fifty, I am sure; if there had been ever so many improperly used it could not amount to that.

Do you believe there were so many used?—There could not be more used upon the woolding.

Could any Cooper, acquainted with the business of a dock-yard, suppose two thousand two hundred and thirty hoops could be used upon those vessels?—No cooper could suppose so.

Mr. *Joseph Baker* sworn.—Examined by
Mr. *Garrow*.

You belong to the rope-yard at Woolwich, do you?—Yes.

You are acquainted with the article of press barrels, they are employed in assisting the laying the rope, I believe?—They are.

Are they made out of old tar barrels?—They are made out of tar barrels which we have to tar the yarn with.

In order to convert them from old tar barrels into press barrels, there are two hoops put upon each?—When we empty the tar, they are put by till we want them for the press, and then there are two strong hoops put upon them.

You are acquainted with the business that was carried on by Messrs. Hedges from the 11th of March, 1800, to the 11th of December, 1801?—They did some barrels for us.

Do you know how many hoops are charged in their account, during that period, upon the press barrels alone?

Lord *Ellenborough*.—What is a press-barrel?—It is used to put press in for the purpose of keeping a weight upon the rope; it has clay put in it to make it heavy, and then it is put upon sledges.

Mr. *Garrow*.—Therefore it requires a greater degree of strength than old tar barrels would possess?—They are not old tar barrels.

Can you state what was the greatest number of hoops that was employed upon the press-barrels between the 11th of March, 1800, and the 11th of December, 1801?—I cannot expressly say.

As nearly as you can?—I believe, for three years, there had not been three hundred barrels coopered for the press.

When they are coopered for the press, that is to say, converted from tar barrels into press barrels, there are two additional hoops put upon each, are there not?—There are twelve additional hoops for the press.

Could there have been used, during that period, for that purpose, so large a number as 29,138?—It was impossible; there never were three hundred done in the course of the three years.

Lord *Ellenborough*.—That number of barrels would require 3,600.

Mr. *Erskine*.—The whole number of hoops charged to be put upon press barrels amount to 29,138.

Mr. *Garrow*.—During this period, were any of the press barrels new headed?—Not to my knowledge.

In the first place, did they want new heading?—They were never new headed to my knowledge: when the head came out, and the clay was filled in; it might have been done, but it never was to my knowledge.

Should you have known it if it had been done?—If I had been present; but I have been in London part of my time.

Do you believe there were 2,117 new heads put into press barrels during that time?—I will not put my belief to such a fact; I know there was no such thing.

Could there possibly have been 2,117 new heads put into press barrels during that time?—There never was any such thing as that.

They could have put but one head in each barrel, I suppose?—No.

Here are some smart hoops charged to be set upon barrels, what is the nature of them?—They are put on the tar barrels that are coopered when we find a hoop defective, in order to keep the tar from leaking.

Could there possibly be employed, during that period 23,940 smart hoops?—The quantity of tar received during that period is out of my line.

Could there possibly have been so many smart hoops employed during that period as 23,940?—I believe no such thing could be done, from what I have seen of the quantity.

Mr. *Erskine*.—This is our case.

DEFENCE.

Mr. *Dallas*.—Gentlemen of the Jury;—I extremely lament, that it falls to my lot to have to address you at all in a case of this im-

portance, and more peculiarly that I shall be under the unavoidable necessity of detaining you for some time, though I hope not long, at this very late hour of the day.

Gentlemen, the charge against these defendants, I need hardly state to you, is one of the most serious sort. It appears from all the evidence in the cause, that they are very young men, that they have not been long in business, that they have been entrusted with the execution of this and of other public contracts of a very extensive nature; and, in addition to this, as you will hear from the witnesses whom I shall call to you, their private business is very complicated and considerable. They are both of them married men—they are the fathers of numerous families; and I am sure, under such circumstances, that you will feel it incumbent upon you to give the most anxious attention to the few observations with which I am about to trouble you. You have no less a question to decide, than whether, by your verdict, these two persons shall be involved in complete and irremediable ruin.

Gentlemen, I cannot help thinking that the case now under your consideration is of a very singular sort, and attended with many peculiarities. It is a charge against these defendants of having, during a considerable length of time, in the execution of a public contract, defrauded the officers of government to a very large amount. From the opening of my learned friend, I was prepared to expect some precise evidence as to the extent of the fraud alleged; for, when he condescended to that degree of particularity in his speech, as to state to you that these persons had actually received the sum of £650*l.* being entitled only to the sum of £35*l.* 6*s.* 6*d.*; when he gave an account of the imputed overcharge, even to the fractional parts of a shilling, I own I did expect that some precise calculation had been furnished to my learned friend that would have been produced in evidence in the course of the cause, and which, upon the part of the defendants, I should have had an opportunity to meet and investigate; and I think if I have not reason to complain, at least, I have cause to lament, that my friend has stated so important a fact without even attempting to adduce any evidence whatever in support of it. I am sure it cannot have escaped your observation as men of the world—as men of business—as men acquainted with the nature and course of commercial dealings, that instead of endeavouring to make out before you, by a comparison of the materials furnished with the charges made, that which my friend was instructed to state—an overcharge to such an excess—he has contented himself merely with laying before you that loose and general evidence which has left the matter at last involved in complete uncertainty and confusion; and I now appeal to every one of you, whether you can, at this moment, according to any proof before you (and by which only you are

bound to decide) say that there has been a fraud committed by these defendants upon government to any specific amount whatever. Put the question to yourselves this instant, suppose it asked of you by any other person after you have retired from the court, to the gentlemen who conducted this prosecution on the part of government enabled you upon your oaths, to state that a fraud to a certain amount has been committed? The answer must certainly be, they have not. Gentlemen, I think it necessary to say this to you, because this semblance of an exact and precise calculation was adopted to create a prejudice in favour of the prosecution.

Mr. Erskine began by desiring you to put your pens in your hands, to put your pens before you, and follow him in his statement step by step; and after having desired you to do this, I should be glad to know what you have finally derived from the proof presented. None at all—the statement is altogether unsupported, and the only evidence of it against the defendants is that of a gross and indeterminate testimony, and what else? not, I do most confidently say, enable you to find, that if the fraud exists, it exists to any particular extent.

That in this case a great deal more has been received than ought to have been taken, is quite impossible to deny, after the evidence we have this day heard; and if the question were, whether more has been paid to the defendants than they were entitled to receive, and whether government could call upon them to refund to that amount, I certainly could not stand up for a moment to contest the contrary. But the question that we have to try is of a very different nature, is it this, and this only—Whether there have been in the particular instances constituted by the different certificates that have been produced Charges made against the officers of government more than ought to have been made with the knowledge, privity and approbation of these defendants? For I am entirely satisfied, say, and I am confident that every one of the gentlemen, will confirm me in the observation that if it shall turn out, at last, upon the evidence, that the three persons who have been produced (upon whose testimony I shall trouble you with some observations hereafter) have committed these frauds for the purpose of putting money into their own pockets, though the effect of that has been to make the defendants receive more than they were entitled to, it will hardly be stated, that if we are satisfied there is no evidence of any fraud upon the part of the defendants of a fraud committed by their servants, that they can be found guilty of this charge.

Gentlemen, the first thing, therefore, for you to attend to, will be the nature of the charge you have to try. What is imputed to these defendants by the present information is this—That being employed to furnish state

to the dock-yard at Woolwich, of the different denominations which have been specified in the course of the evidence, in small quantities, and from time to time, they procured the officers of government to sign false vouchers, and by means of these vouchers received a great deal more than they were otherwise entitled to have.

Now, in the investigation of this charge, the first point to which I wish to draw your attention, is the situation of these contractors, as it appears upon the evidence which has been laid before you: I think you have heard, from every one of the witnesses, that so little were they personally engaged in the execution of this contract, that they are not proved, during the whole year and nine months, to have been ever once in Woolwich dock yard. So little were they there—so little did they attend to the management of this particular business themselves—that every one of the officers of the Dock-yard has told you that they were strangers to their persons, that they did not know them even by sight. This, therefore, is not the case of men conducting a business by a personal superintendence, but the case of business conducted by the means of an agent, with the approbation of those for whom the business was to be done. And this forms a material distinction for you to attend to in the investigation of this case; because, most undoubtedly, if it had been the duty of these persons to attend, from time to time, upon the spot, and if the officers of the dock-yard had not been personally present to ascertain whether the defendants were in this respect attentive or remiss, it would be an argument that would come with an ill grace from me as their counsel, that they neglected to do what they ought to have done, and to endeavour to avail myself of that neglect as a justification for misconduct occasioned by it. But this is not the case. They had other contracts at the same time for Sheerness, Chatham, and Deptford; it was impossible they could be personally present at all these four yards, and therefore the management of this business devolved, with the knowledge and approbation of the officers in the dock-yards, upon the different persons who, as agents and servants of these contractors, were appointed, from time to time, to manage it.

It has been stated, that the business in this dock-yard was to be conducted in a particular way, and with reference to an order that was made; and the manner in which my friend explained that the business of the dock-yard was to be conducted, was this—That no work was to be done the necessity of which was not previously pointed out by the officer in whose department it was—that after the work was done, a survey should be made by the different storekeepers and clerks in that department—then, in consequence of that, a note of the work should be

made out, and certified by the officers of the yard to have been done, and upon that note the contractor should receive the money. The order in question is of so recent a date as the year 1797. It now lies open before me, and was given in evidence by my learned friend, and is undoubtedly to the effect he has stated. Now, gentlemen, I think I am entitled to say, upon the part of these defendants, that the dealing between them and government, in this particular case, took place with reference to the established regulations of the dock-yard; and it is a little hard for them to be told that when, in the year 1800, they entered into the contract, (these regulations existing from the year 1797), that the evidence by which they agreed to charge was to be a certificate signed by persons upon the spot, not in their employment, but in the employment of government: when that certificate was brought to them, they not being upon the spot, certifying the work to have been done, that they were not to give faith and credence to it; for the result of the charge is, that being told by the officers of government that the work was done (and not having been present themselves), in consequence of that assurance from those officers, they afterwards received the money: I do say this is a circumstance of extreme peculiarity in the present case.

Gentlemen, I admit that if there had been no such regulation existing, the persons whom the defendants employed as their servants in the dock yard, to conduct the business there, would have been persons over whose conduct it would have been necessary for them to watch; but, from the very nature of the dealing, there was no necessity for any vigilance of that sort, because you see the regulation imposed—what? not the eye of the master as a check upon the servant, but the superintendence, and control of the officers in the immediate employ of government, resident upon the spot where all this business was to be transacted. This accounts for that which would be negligence in any other case, not being so in the present. It accounts for these gentlemen not looking after their agents, as otherwise they would have done, when they were told they could not receive payment unless the proper officer certified under his hand the work that had been done, the sum to which they were entitled; in a word, that the certificate of the officer was the voucher to which they were to look.

Gentlemen, in the administration of justice to others, we must bring the case home to our own doors. Suppose it happened that any one of you had a brother or a son so employed, or that you yourselves had entered into a contract of this nature with government—that you were not to be personally present—that your absence was not, therefore, matter of negligence or reproach—that the business was unavoidably to be conducted by some person in whom you were to place a degree of confidence—if you entered into this contract

with a knowledge of an existing regulation, by which this person could commit no fraud against government, because an officer of government was directed, in every instance, to survey and report the work done—if, week after week, you found these different certificates brought to you signed and countersigned by the different officers of the dock-yard, stating how much had been done in the course of each week by the person whom you employed, would you think it justice, if, at the distance of two or three years, an information were to be filed against you by the attorney general calling upon you to specify what were the materials furnished, in every instance, what the work and labour in a case in which these men employed different persons under them, and claiming a restitution for overcharges? But how much less just would you consider it, if you were to find yourselves criminally charged with fraudulent conduct, when your conduct was only this—that having no knowledge upon the subject, and no interference with the business, you had complied with the regulations of the dock-yard, and received a certificate under the hand of their own officer, that the work had been performed? I venture to state, there never was a case similar to the present presented to the consideration of a jury, at least within my experience.

We have been told by my friend of the great and meritorious services which have been rendered to the country by the noble lord at present at the head of the Admiralty, in reforming the abuses in the different dock-yards. No man is more sincerely disposed to acquiesce in any praises that can be bestowed upon that great and illustrious character, than I am. But I think I am furnished, by this very panegyric, with pretty strong authority that mere negligence is not always a proof of fraud; for no man living will stand up in a court of justice, or elsewhere, and say, that when the officers of the dock-yard are directed, in every instance, to point out what work is necessary to be done—when they are directed, after it is done, to survey and report—and when we find, for two years together, upon work to the amount of between two and three thousand pounds, not one officer has, in a single instance, complied with the exigence of this order.—I trust no man living will be found who will not say that such conduct is gross negligence;—and if gross negligence be of itself conclusive evidence of fraud, I should be glad to know why the gentleman who was at the head of this department has been removed from it?—For his misconduct? No;—but to be promoted to a better and higher situation; and every one of those clerks, by whom the business has been so conducted, remains at this moment in the service and employment of government! The conduct, therefore, of government, on this occasion, is itself the strongest proof that mere negligence is not always evi-

dence of fraud; for, if government had considered it, they would not have suffered a gentleman to be promoted, and the others to continue in the situations which they at present fill. Is it not, then, a little hard to make this distinction between these defendants and the officers of government, that the one within whose department it was, to do which, if he had done, this could not have happened, should be promoted to a higher and more beneficial employment; while these persons, whose negligence, if any, no man will say is equal to that of those who ought to have examined the accounts and vouchers the time, are to be brought before you as criminals, and to have negligence imputed to them as conclusive evidence of fraud? It seems to me, that admitting, as I must, a great negligence in the defendants, it is a great deal to convert it into a proof of guilt against them, while greater negligence in the officers of a dock-yard is treated as consistent with perfect innocence, at least, as far as the law is in question.

I do not say, that if a suspicion of the conduct of their servants had arisen, that they could not have entered the quantity of materials sent out at particular times, but that a suspicion arose; and they did not do this because they were told by those with whom they were dealing it was not necessary, and for this reason, that the charge was not to be made out according to any entry made by the person they employed, but by the officers of the dock-yard, as a check upon that person. If they had divested them of the attention they gave otherwise to have paid to the subject, instead of gross negligence it appears to me that there is no negligence whatever. If all these certificates had been brought in at one time, the greatness of the sum might have attracted their notice—so large an amount might have struck them as more work than was likely to have been done; but that was not the nature of this case;—all these charges were brought in singly, and one after another; certificates were delivered at the end of every week, the accumulation was gradual, and at the end of three or four months, the whole was made up into one general charge, and they received a navy bill for the gross sum;—and there was nothing in this particular case that could induce any man, independent of the testimony of the three witnesses, upon which I stand, to serve hereafter, to believe that any fraud was going on with the knowledge of these defendants.

On the part of the prosecution, it is proved by the evidence, that these contractors were employed to furnish goods and to supply materials, as well as to do work in the dock-yard. Now, there is one circumstance worthy your attention, with respect to the goods they were to supply. Those of them who were acquainted with business, knew perfectly well they must have kept some account of these. Goods to a very considerable

amount could not go out of their premises without being entered in some book; but it is different with respect to the materials that were taken out in small quantities to do daily repairs; and the witness has, in fact, said he took them from the yard of the defendants as he chose, and it does not appear that any entry was made of them at the time. But, with respect to the goods supplied, there is no pretence that they have, in a single instance, defrauded government; and if you look at these certificates, you will find the goods constitute more than one-fourth of the whole amount! So far from there being any insinuation that they have conducted themselves fraudulently in this respect, you will find the information itself confined to work, labour, and materials only. The officers of government have had all these accounts under their inspection, and they have been subjected to their severest search and scrutiny; and what is the result?—They have not been able to detect fraud, in a single instance, in the most important part of the contract. In the business, therefore, conducted immediately by themselves, there appears no fraud, and the only fraud alleged is within the department of those they were obliged to intrust in their absence, and whom they intrusted under a belief that the officers of government would do their duty, but which they have not done, and which, if they had performed, this overcharge could not possibly have taken place. I think I may state to you it would be a harsh and an uncharitable—a forced and cruel conclusion—for any gentleman to come to a case of this sort, supposing nothing specific proved as to knowledge in the defendants, merely because there has been an overcharge which the officers of government could and might have prevented; that concluding these servants of the public did their duty, they looked to their certificate alone: sure I am that you would not, by your verdict, deliver the accused up under such circumstances, to a sentence of guilt, and to the ruinous consequences that must unavoidably follow. I admit the case would be entirely different if there had been the least evidence that either of these defendants had conducted himself fraudulently in the manner I am about to state. The officers of government were to survey this work, and report what had been done. True—but we all know that persons employed in public situations are open to the influence of corruption. If, therefore, on the part of the crown, any evidence had been produced, that the defendants had bribed the different officers of government to betray their duty in this respect, it would be impossible for me, no doubt, to offer one word in their defence. But so far from this being the fact, the charge itself acquits them. It is not that they conspired to corrupt the officers of the dock-yard to produce false certificates, but that they have conspired, with other persons unknown, to do that which is the only subject of this accusation, to procure these officers

to sign false vouchers, not charging a conspiracy with the officers themselves. In this respect, therefore, they are confessedly innocent; and indeed it would be a most libellous charge upon the commissioners of the navy themselves, to state that they have the least reason to suppose that the defendants had bribed the officers to act as they have done, while every one of them remains at this moment continued and acting in his former employment: I am, therefore, confident every one of you will go along with me in the observation, for the case forces it upon us, that when every clerk who, in succession, signed these certificates, instead of being displaced from his situation, is at this moment in it, the fact of such continuance is conclusive evidence to show government are perfectly satisfied that these clerks were not bribed by the defendants to conduct themselves as they have done. Then, this I take to be a case of neglect on the part of the officers of government, and not the result of any attempt of the defendants to corrupt those officers: it is not the case of a fraudulent seduction of men from the discharge of a public duty, in which instance, I admit, it would be impossible for me to have fairly troubled you with the observations I have made. To what then does the case result in this stage of it, but this? The contractors with the dock-yard are told they must make out their account by the certificates furnished by the officers of government; they make no attempt to corrupt these officers; they presumed they would do their duty; and when they found, week after week, a certificate brought, signed by the different officers, stating that the work was done, they concluded it was done, because it was signed by those whose duty it was not to have signed it unless the work had been actually performed. I submit, therefore, and I hope not with improper confidence, if the case stood only upon this evidence, I should be entitled to your verdict of acquittal, and that it would be impossible for you, in the correct and cautious administration of justice, to pronounce that persons of this description not having been personally present, but having acted upon charges certified by the officers of the dock-yard, who are upon the spot, to be just charges, merely because they received payment upon such certificates, are to be condemned as having acted fraudulently.

But we are told that part of these charges consists in hoops for masts of different vessels, and it is a fact upon which my friend on the other side seemed to bestow a great deal of triumphant observation, that there were ships of every description, from first-rate and second-rate men of war down to frigates, to the number of eight, ten, or twelve, with respect to which there are charges for hoops, in the course of one year, and that these vessels actually were not in dock at the time! It is a most extraordinary circumstance, no doubt, that practices of this sort can take place with-

in the dock-yard of Woolwich, when the officers upon the spot must know what ships are there! But the defendants were not personally present; they do not live upon the spot; they are proved never to have been there;—how then were they to know that these ships were not in dock? And are we to be told, in a criminal case, that when the officers upon the spot certify under their hands, as a fact, that so many hoops have been put upon the masts of different ships, by name, and the contractor, who was absent could not know the fact—that fraud is, in this respect to be imputed to him? It seems, therefore, to me, that this fact, so much relied upon, does not advance their case a single step; it only proves that fraud was committed by the persons in the employment of the defendants: but as to their own knowledge, it leaves it where it was, as it stands upon the other parts of the proof.

Now really, gentlemen, it seems to me that, under circumstances of this sort, where, at the utmost, upon the evidence as far as I have proceeded, the case would only amount to this—that if they had examined more minutely they might have discovered a mistake—and that when they did not make that examination, because they trusted to the report made by the several persons to whom they were bound to look—I trust I do not indulge an improper confidence, when I say, that if the case stood upon this ground alone, you would certainly acquit the defendants.

But other evidence has, no doubt, been given; and you have had three witnesses called before you, Roberts, Gardiner, and Havinden, each of whom states himself to have been in the employment of the defendants, and the effect and result of whose testimony is—that there has been that which, if established, would substantiate the charge, namely, that there was actual and direct knowledge of these several overcharges, and that they were perfectly aware they were, from time to time, receiving from government a great deal more than government was liable to pay.

Gentlemen, I own I am one of those who, if I were in your situation, should listen with extreme caution to the evidence given by every one of these persons. We have had, within the course of the last forty-eight hours, an awful warning, in this place, how little reliance is some times to be had upon the mere positive testimony of witnesses, to whom even no apparent exception will lie. Twenty-four hours have hardly elapsed at the moment I am addressing you, since three persons have been convicted in this court of perjury, all of whom, in the Court of Exchequer, positively swore that they had seen a man of the name of Gayford, on a given day, upon the beach on the coast of Suffolk—that they went down together, stating the particulars of their journey—that smuggling was carried on to a considerable extent—and, upon the testimony of these three persons, all of whom swore that they were per-

sonally present, and saw Gayford there. Gayford was made liable in penalties to the amount of 6,000*l.* Indictments against these three men for perjury have since been tried before his lordship; and it was most clearly proved, that at the time they swore they were upon the beach, in Suffolk, one was in Brixton, another in the Fleet prison, and a third in a different part of London, and the whole story now turns out to have been a wicked fabrication, and they have all been convicted of perjury in this court in the course of the three last days! The mere circumstance, therefore, of three witnesses swearing positively to a fact, is not that which would lead my mind to an unerring conclusion, and more particularly when they spoke under circumstances which render them liable to great suspicion. In a case of this sort, safely to convict, you will expect to have witnesses of an unexceptionable description.

Gentlemen, my friend has truly stated in the different dock-yards, scenes of fraud and robbery have been going on to a tremendous extent. I admit it. But how does the observation apply? Is not every one of these three persons who were called to prove the guilt of these defendants, a convicted criminal upon his own confession? Could delinquents in these very scenes? They do come forward, one after another, to tell you what? that they are persons of this infamous description—that merely because (if the story be true) the defendants desired them to make an overcharge for work done in the dock-yard, therefore they did so—do I expect myself too strongly when I say, upon their own evidence, they are convicted criminals? The defendants deny they are guilty of any fraud: they stand before you innocent men at present—their guilt or innocence is the question you have to try—but these men, with the audacity to come forward and confess that they have been guilty of this fraud. As to their guilt there is no doubt; and it is upon the testimony of these three men, who name themselves to be the persons by whom the fraud was carried on—these men who have been, in the language of my friend, the persons conducting these scenes of pillage and robbery—it is upon the evidence of these acknowledged and recorded plunderers and robbers, that you are desired to convict blameless, unaccused and unsuspected men!

Gentlemen, place yourselves in the position of the defendants. What would you do, if, in the conduct of a contract of this nature, having trusted to the certificates of the officers of the dock-yard—having afterwards closed all your accounts at a distance of three persons shall be brought forward to this description—persons who admit themselves to be of the most infamous characters—persons who, upon the suggestion of any man, would carry on a fraud against government—should you not think a jury dealt very uncharitably by you, if, upon the testimony of the

such miscreants, they were to come to a decision which would ruin you for the remainder of your life? I think, if there were nothing of improbability in their evidence, and nothing of contradiction, the mere fact of each of these persons admitting himself to be of this description, a jury would not be very much disposed to give their belief to persons of so abandoned a cast. It would not be an humane, it would not be a cautious, it would not be a safe administration of justice.

But what is the account they give? Putting character aside, let us try its consistency. The first of them is a person of the name of Roberts. I say again, though I do not complain of my friend Mr. Erskine, I have great reason to lament that it has unfortunately happened in this case, that he has again introduced in his opening of this cause that which is not evidence; he prefaced it by asserting that he would prove a fact, which would have made it evidence if he had proved it, but in the attempt to prove which he has altogether failed. You will recollect the manner in which my friend introduced the evidence of Roberts: he said he was employed, not during the time of the execution of these contracts, but before they took place—that afterwards a person of the name of Gardiner succeeded him, and Havinden succeeded Gardiner; and, said Mr. Erskine, the way in which I will make the conversation which took place between Roberts and one of these defendants evidence is this—by proving that he was afterwards desired to communicate the instructions he received to Gardiner and Gardiner, in consequence of that communication, was to conduct himself in the same way. The witness has proved directly the reverse; and my lord, when he refers to his notes, will find, that in the conclusion of his evidence, he says he had no instructions whatever to communicate this to Gardiner; and therefore I might, upon this part of the case, if necessary, dispose of the testimony that has been given by this man, with this single observation, that it could only be evidence in consequence of a fact which Mr. Erskine pledged himself to prove afterwards, but which he did not establish, and therefore that is no evidence whatever.

Lord Ellenborough.—Whatever a defendant says is evidence, and this being what the defendant said, as explanatory of his motive, though I do not see that it applies to any particular transactions within the scope of this information, is certainly evidence.

Mr. Dallas.—Gentlemen, I do not mean to shrink from the evidence given by this man; on the contrary, I wish to draw your attention to it, and examine it, such as it is, at the same time that I say it is not evidence within the scope of this information, or, at least applicable to the transactions in charge. But what is the account he gives? He tells you this extraordinary story, and believe it if you can—he says, when he first went into the

Dock-yard, he had a conversation with John Hedges, and he tells you this defendant was so incautious, so indiscreet, as to do—what? To trust to a verbal communication, at which no person could be present? No—but actually to give him, in writing, the manner in which he was to proceed in cheating government upon these occasions, and he tells you he had the original six months ago, and it is now lost. Gentlemen, I would surrender up these defendants at once to a verdict of condemnation if this story can be true! Why, these were different forms of notes applicable to the different transactions—no one original could show him how to proceed in different cases; it is impossible that the paper which he held in his hand, consisting of only two or three lines, or that his account from memory of the original paper, if it existed, can be true. The cases which arose were numerous, of supplying articles of many different descriptions, to the amount of twenty or thirty, in the dock-yard; and no one form could be given which could apply to every particular case. I ask, can you believe the story he tells to be true? Most undoubtedly, if he had produced any original paper in the hand-writing of one of the defendants, the paper itself, directing him how the fraud was to be carried on, would have been conclusive evidence—you would have had a light by which you could safely proceed in this case: but again it happens, in a most extraordinary way, that this supposed original paper is lost. Lost, when?—Lost after the time when this information was filed by the attorney-general! Once more I ask, can you believe it possible, that this man, being examined, as he would probably be, before filing the information by the attorney-general—this important document—this original paper, in the hand-writing of one of the defendants—conclusive evidence of the fraud—evidence, of itself, worth more, than all they have this day produced—can you believe it would have been suffered to continue in the possession of this man, or that, remaining there, it would have been kept with so little of care and attention as to be lost, even after this charge was prepared for trial? This incredible story, this man, who confesses he is guilty of this fraud himself, desires you to believe against others!

With respect to the next witness, John Gardiner, I think that his evidence also is full of contradiction. Gentlemen, you will recollect that at the conclusion of it he says, it was by the direction of John Hedges that he knew how to charge at first, and as it is to be observed, I will mention it as I go along, that it may not escape me, that, upon this occasion, it is impossible for us to meet testimony of this sort, because both these persons choose to fix a conversation with John Hedges when no other person was present. He is a defendant, and we cannot call him—he labours under the disadvantage of having two witnesses swear to a conversation of this descrip-

During the whole of your knowledge of these young men, what has been your opinion of them for integrity?—I never heard their character called in question; I always looked upon them to be young men who carried on business with credit to themselves and satisfaction to their employers.

From what you know of them do you think them capable of committing a fraud upon government?—I never heard them charged with any, nor do I suppose they are; I always considered them as honest and industrious young men.

Mr. William Easton sworn.—Examined by Mr. Gibbs.

How long have you known the two Mr. Hedges?—Ever since they were children.

Have you known them well, and had opportunities of observing them, and their conduct?—Yes, I have.

From what you have seen of them, do you think they are men of character?—I always understood they were, and always thought they were.

As men of honesty and integrity?—As men of honesty and integrity; I always supposed them to be so.

From your own observation and knowledge?—Yes, from my own observation and knowledge.

Do you believe, from what you know of their character, that they are capable of committing a gross fraud upon their employers?—I should not suppose that they were.

Mr. Jacob Hancock sworn.—Examined by Mr. Lawes.

Do you know these defendants?—I have known them a great many years; I always supposed them to be two very honest industrious young men.

Have you known them intimately, and have you dealt with them?—I never dealt with them in my life; I have lived in the parish of Rotherhithe a great many years; I have been a master tradesman a great many years, and have conversed with them, and seen them carrying on their business as I thought in a very regular way.

Did you know their father before them?—Yes, and their grand-father.

Mr. John Lepard sworn.—Examined by Mr. Gibbs.

How long have you known this family?—I suppose between forty and fifty years.

Have you known John and Michael ever since they were children?—I have not been near them for fourteen years. I removed out of the neighbourhood.

Mr. Thomas Woodrooffe sworn.—Examined by Mr. Gibbs.

How long have you known these two persons?—One five years, the other seven or eight years.

What character have they borne, as honesty and integrity?—Exceeding good ones, as far as ever came to my knowledge. I never heard the least imputation upon the character of either of them.

From what you know of their character do you think they are capable of committing a gross fraud?—I do not.

Mr. ——— Brandon sworn.—Examined by Mr. Lawes.

How long have you known this family?—About twelve years.

During that time, what has been the character of these young men?—From their general conduct, whatever I had any knowledge of, they have appeared to be very honest and industrious men.

Mr. Francis Woodrooffe sworn.—Examined by Mr. Gibbs.

How long have you known these two persons?—Seven, eight, or ten years.

Have you known them well?—Very well.

What character have they borne as men of honesty and integrity?—I have always understood them to be men of high integrity.

Is that the general character they bear?—Their general character; I never heard anything to the contrary.

Mr. William Surfen sworn.—Examined by Mr. Gibbs.

How long have you known these two defendants?—Ten or a dozen years, or longer.

Have you known enough of them to be a judge of their general character?—Yes.

What has their general character been?—I never heard any thing against them; they are as honest upright tradesmen, I believe any in Rotherhithe.

Mr. ——— Russel sworn.—Examined by Mr. Lawes.

What business are you?—A timber merchant.

How long have you known the defendants?—Several years, but never in the wine trade.

Do you live in the neighbourhood?—Yes.

What has been their character for integrity during that time?—Always honest, respectable young men; I have always understood them as such.

Mr. George Jones sworn.—Examined by Mr. Gibbs.

How long have you known the two Mr. Hedges?—From ten to twelve years.

Have you had transactions with them?—Yes, every year.

You have been able, I suppose, to judge of their character as men of honesty?—I never saw any thing of them otherwise.

Are they, as far as you have known their character, men of honesty?—They are.

Mr. *Thomas Hayman* sworn.—Examined by
Mr. *Lawes*.

You are a West India merchant, I believe?
—Yes.

Do you know these defendants?—Very well.

Have you had any dealings with them?—I have.

For any length of time, and to any amount?
—Ten or twelve years; probably to a thousand pounds in the course of the time.

Do you conceive, from what knowledge you have of their character, that they are men capable of committing a gross fraud upon their employers?—I do not, I was very well satisfied with them.

Mr. ——— *Alexander* sworn.—Examined by
Mr. *Gibbs*.

Do you know the two Mr. Hedgeses?—Yes.

How long have you known them?—A dozen years.

Do you live in their neighbourhood?—I do.

Have you had transactions with them in business?—I have done business for them.

During all the time you have known them, what character have they obtained for honesty and integrity?—I ever knew a good character of them.

That is, they ever obtained a good character since you have known them?—Yes.

Mr. *Walter Pace* sworn.—Examined by
Mr. *Lawes*.

How long have you known this family?—Forty years.

Have you known the young men during that time?—I have known the young men well from five or six years old.

You have known them from that time?—I have.

From your observation upon them, and the character they have borne, do you think them capable of committing a fraud upon their employers?—I employ them at times, and have ever found their charges to be correct, and as easy as any other tradesmen I employ.

Do you think them capable, from what you know of their character, of committing a fraud?—I have always observed them act as young men of respectability; and in the business in which I have employed them, their accounts have been as correct as the accounts of any other men.

Mr. *James Dunn* sworn.—Examined by
Mr. *Lawes*.

How long have you known the family of these defendants?—Forty years; I knew their father and grandfather.

Have you known these defendants the whole of their lives?—Yes; I believe there are not better young men in the county, nor better

subjects to his majesty: one is an officer in Rotherhithe corps, the other belongs to the corps; I believe there cannot be two better young men.

Mr. *William Bennett* sworn.—Examined by
Mr. *Gibbs*.

How long have you known these young men?—Seven or eight years.

Have you had transactions with them, in the way of business, during that time?—I have.

You have had the means then of becoming acquainted with their character?—I have had extensive dealings with them.

Was their character that of men of honesty and honour?—I believe strictly so.

Is that the general character they have obtained, from the knowledge you have had of them?—It is.

Mr. *William Lister* sworn.—Examined by
Mr. *Lawes*.

You are a wine merchant, I believe?—I am.

Have you had dealings with these defendants?—Yes, from their first going into business to the present hour.

You have had an opportunity then, of judging of their character for integrity?—I always found them strictly honest.

Mr. *William Roberts* sworn.—Examined by
Mr. *Gibbs*.

How long have you known John and Michael Hedges?—About twenty years.

Do you live in their neighbourhood?—Yes; I have lived at Rotherhithe these twenty-five years.

What characters have they obtained as men of honour and honesty?—I have always heard a good character of them.—I have never been in the habit of intimacy with either of them, but have always understood them to be industrious tradesmen, of good moral characters, and of good religious principles.

And is that their general character?—As far as I have ever heard, it is.

Mr. ——— *Pennet* sworn.—Examined by
Mr. *Lawes*.

You are a timber merchant?—Yes.

How long have you known the defendants?—Fourteen years.

Do you live in their neighbourhood?—Yes, in Rotherhithe.

Have you had dealings with them?—Never, but I have known them some years.

What is their character for honesty?—I have ever considered them as upright honourable characters.

We can only ask to general character?—They have good characters undoubtedly.

Mr. *Thomas Arnold* sworn.—Examined by
Mr. *Gibbs*.

You are acquainted with the general cha-

racter of Mr. John and Mr. Michael Hedges?—I am.

Then from their general character, do you believe them to be men of honesty and integrity?—As honest and industrious young men as any in the parish, and as respectable.

That is the general character they have obtained through the whole parish?—It is; they were volunteers with me throughout the last war.

You have your reasons for being of that opinion respecting their character?—I have.

Mr. ——— *Bridges* sworn.—Examined by Mr. *Gibbs*.

How long have you known Mr. John and Mr. Michael Hedges?—I have known them for some years.

What character do they bear as to honesty and integrity in their neighbourhood?—A Very good one, I always understood.

Is that their general character?—Yes; I always understood so.

Mr. ——— *Sanderson* sworn.—Examined by Mr. *Lewis*.

Do you know John and Michael Hedges?—I have known them from children.

What has been their character during that time?—A very respectable character as any young men in the neighbourhood; I never heard any thing to the contrary.

Do you live in that neighbourhood?—Yes. Then you have had an opportunity of observing?—Yes, to be sure.

Has their character, during the whole of your acquaintance with them, been that of merit of honour and integrity?—Yes.

Do you conceive, from their character, that they are capable of committing a gross fraud upon their employers?—No, I do not believe any thing of the kind.

Mr. *Henschen* sworn.—Examined by Mr. *Gibbs*.

How long have you known John and Michael Hedges?—I knew them from children.

Have you known them ever since?—Yes.

Are you acquainted with their general character?—I never had any dealings with them myself; I never heard any thing of their character but what was upright and honest.

From the general character they bear, do you think them capable of committing a gross fraud upon their employers?—I should never have thought any thing of the kind.

Mr. ——— *Adams* sworn.—Examined by Mr. *Lewis*.

Do you know these defendants?—Yes.

How long have you known them?—From their infancy.

During your knowledge of them, what has been their character for honesty?—Truly proper and right.

Mr. ——— *Kisson* sworn.—Examined by Mr. *Gibbs*.

How long have you known John and Michael Hedges?—About seven years.

Are you acquainted with what their general character has been during that time?—As respectable characters as any men in the parish.

For honesty and integrity?—Yes; they are esteemed by every person in the parish.

As men of honesty and integrity?—Yes, they are.

SUMMING UP.

Lord *Ellenborough*.—Gentlemen of the Jury; This is an information which has been exhibited by his majesty's Attorney-general against Michael Hedges and John Hedges, and it charges that they were jointly employed by the commissioners of the navy to deliver into the stores of the king's Mill Yard and Rope Yard at Woolwich, and cooper's wares, and to perform certain work in those yards, at certain prices to be paid to them; that, at the time of signing the several notes which are set forth in the information, the several persons whose names are mentioned—Pidcock, Musgrove, Constable, Eden, Bradnock, and others (all of whom have been produced as witnesses and one George Fensham (who has not been produced) were clerks in the office of the store-keeper there; that one John Jeffery was clerk of the cheque, and that Richard Perring and George Gainer were store-keepers. It is stated, that it was the duty of Jeffery, as clerk of the cheque, and of Perring and Gainer as store-keepers, to make out true certificates of the quantity and amount of the work and materials, from time to time, done and provided by the defendants: and then it proceeds to state the criminal charge against the defendants; that they, intending to defraud his majesty, conspired to charge his majesty with more money than had become due to them, for work and materials done and provided; and that, in pursuance of that conspiracy, they procured one Musgrove to sign a false and fraudulent note: and then it proceeds to state the several notes, thus describing and alleging the means by which fraud upon the government was committed, to be—the procuring the several store-keepers clerks to sign the several notes which have been produced, and there is, in each count charged, the production of these false notes; the procuring them to be signed; and, by means of the obtaining of certificates, which certificates are also stated, and have been given in evidence and then it proceeds to state that, by means of these certificates, the defendants immediately obtained payment of several sums of money; that they had no pretence to make charges to that amount upon government and

that, by means thereof, they defrauded government of the several large sums of money stated in the information. These are in substance, the object and means, and the effect of the conspiracy, as they are charged.

In order to maintain this charge, it must be proved that Michael and John Hedges are guilty of the charge which (stripped of form) is, that they, being employed for his majesty as coopers to this Dock Yard, and having charges to make for work done and materials found for his majesty, made certain enormous false charges, and procured signatures to notes, which were to be the means of obtaining the certificates, which certificates were to be the means of obtaining the payment of corresponding sums of money; and that, by means of these false charges, and the other measures pursued to give effect to them, they, in fact, defrauded government to a considerable amount. In order to establish this charge, it must appear to you that they were fully acquainted with the fact of sums being, from time to time, obtained of government by means of false vouchers, for certain articles of work and materials charged for as done and supplied, which were not justly due; that they were privy to the circumstances of the fraud thus carried into effect for their benefit; for it is not enough, as you have been told, that their servants committed the fraud, if it does not appear to you, by positive or at least highly probable evidence, that they were also cognisant of it, and consented and agreed to it: but if it appear to you that they were so, and used these servants as their instruments for the purpose of making these false charges on government, and did accordingly receive sums of money, procured to be issued by means of such a corrupt conspiracy on their part, and so carried into effect on the part of their servants, for the purpose of defrauding government, however pitiable their situation may now be; however much one may lament that young men, heretofore of good character and honourably connected in point of family, should have so misconducted themselves; although one may deplore their lapse from virtue, and their fall from fame; yet it will be your bounden duty; a painful one it may be, but it will still be your bounden duty, if the evidence should impress upon your minds a fair and full conviction that they were criminally concerned in this fraud, that they contrived or were privy to, and furthered the means of effecting it, and knew the documents, in virtue of which the payments were, from time to time, made to them, to be false, and that there was no reasonable or just pretence whatever for such charges being made, it will be your duty to find them guilty.

The circumstance of the good character given them by a variety of persons, should, of course, make you pause at first in the conclusions you would otherwise draw from the facts, and require a greater degree of satisfactory evidence to establish their guilt; but if

you are, upon the whole, in virtue of such evidence, fully and conscientiously persuaded of their guilt, character is no longer of any effect; for character is only to be thrown into the scale when the balance hangs even; or, at least, in some degree of suspense between guilt and innocence. I will now point your attention to the evidence by which it is contended, on the part of the crown, that this charge is brought home to the defendants.

The first person called is Charles William Foster, a clerk in the Navy-office; he brings a contract entered into by a person of the name of Mary Gunter, who, so long ago as the year 1745, held a contract from the commissioners of the navy, for supplying his majesty's yard at Woolwich with certain articles of coopers wares: the articles were the same, in point of denomination, as these persons have since supplied, namely, nunn-buoys, wood buckets, butts, puncheons, hogheads, rundlets, barrels, hoops for masts, butts, and press-barrels, and other articles.

This contract appears to have been renewed with Messrs. Young, Adams, and Corssen, on the 28th of February, 1782; and on the 2nd of June, 1800, Young, Adams, and Corssen, in whose names the contract continued down to that period, in effect declared that they were trustees, for these two defendants, and the commissioners made a warrant directing the accounts to be in future carried on in the names of the Hedgeses, and adopted them by a transfer of the account, as substituted contractors in the place of Young, Adams, and Corssen, who were contractors before; it appears by that that all such quantities as should be demanded by the commissioners, were to be paid for by bills made out quarterly; the price of each article is stated, and it appears that the prices were varied afterwards, sometimes increased, sometimes diminished: they oblige themselves to supply all the enumerated articles afterwards, at the advanced price of thirty-five per cent. The contracts are for the delivery of articles at stipulated prices, in each contract — both the contracts are for goods to be furnished in Woolwich Dock-yard. In Gunter's contract, they were to deliver them in a timely and reasonable manner after they should be demanded, that the service be not delayed. There are other circumstances of the contract not extremely material to trouble you with at present: there are certain stipulated prices; the heads of the casks are to be fastened in with so many nails, at so much each; making and putting in the heads in all dry casks, 4½d.; taking out and putting in again heads in all dry casks, 4d. each; putting new heads into tar-barrels, 4½d. each; and so on. These were the rates at which the contract was at that time made. It appears, according to the certificates afterwards, that further increases were allowed by government to the contractor; an advance of ten per cent in one case, and so on.

John Thomas Briggs says, he was a clerk in the Navy-office in the year 1800. He produces the contract before stated, of the 2nd of June, 1800, made by the principal officers and commissioners of the navy, in consequence of Messrs. Young, Adams, and Corsen having desired that the contract held by them in trust should be transferred, and the certificates, in future, made out in the names of the defendants. It runs in these words: "Messrs. Young, Adams, and Corsen, having requested that the contract for supplying your and Woolwich-yard with coopers wares, which they at present hold for Messrs. Michael and John Hedges, the sons of the late Mary Anne Hedges, may be transferred to them; these are to direct and require you to make out all certificates in future in the names of Messrs. Michael and John Hedges accordingly, for which this shall be your warrant. Dated, Navy-office, 2nd June, 1800." And the names of three commissioners, Hope, Henslow, and Rule, are subscribed to this. By this instrument, or warrant, therefore, directing certificates to be made out in future in the names of Michael and John Hedges, they are virtually substituted as contractors in the room of Messrs. Young, Adams, and Corsen, and upon the terms on which those persons had before held the contract.

There was some discussion at the bar respecting this instrument, which was, at the time it was first produced to us, in an unstamped state; however, it has since been stamped and it now appears before us in a legitimate form, so as to validate and substantiate the contract entered into between the defendants and government, and to place them as contractors in the same situation in which Young, Adams, and Corsen stood before.

Richard Pering is next called:—he says, he was storekeeper at the dock-yard at Woolwich, during the whole of the time comprehended in the information, and for five or six years before; he does not know Michael and John Hedges, but he knows they did work, and that they were employed always almost under some writing (this part of the examination applied to the instrument before it was stamped); the prices were always made out by what they termed a contract. This evidence made it necessary to produce the contract in writing (and which was afterwards produced stamped, as I have already stated); they frequently sent their servants down, by his direction, to do work in Woolwich yard; he has several clerks under him; Benjamin Pidcock and others, naming the several persons who, you remember, were successively produced as witnesses to prove the different notes which had been brought to them, and which they respectively signed, and, upon which notes being brought to them they made correspondent entries in the workmanship book, as work done for government; which book afterwards, together with the

notes, became the ground-work for issuing the certificates which have been obtained. He says, "my clerks were in the habit of signing notes for work done by the coopers; my clerks were employed afterwards in examining the particulars from the notes delivered in: when they had examined them, a fair certificate was made out from the notes, and that was laid before me for my signature: it was supposed to be examined as the notes as the original vouchers; I kept those certificates to be transmitted to the navy board; my signature was necessary as far as related to the stores; the workmen did not come under my cognizance; they were transmitted to the navy board as vouchers that stores to that amount had been delivered." There are four different certificates afterwards produced and read in evidence, under which certificates the money was afterwards obtained.

William Constable is called. He says he is a clerk in the storekeeper's office at Woolwich, and has been so from the year 1776 to the present time; the defendants were in the habit of doing coopers' work during that time; he signed notes for work supposed to be done, and there are a great number of notes which are signed, which run pretty much in this form, which is the form stated in the first of these counts in the information:—"400 extra tar hoops on each; 400 extra wood hoops on each; 400 extra tar hoops on tar barrels, two on each; 400 tar barrels trimmed and set to rights, with 400 wood hoops on each." This was signed by the clerk who, in the present instance, was J. S. Musgrove, and is dated the 15th of March, 1800. There are similar notes, which it is unnecessary to trouble you with, very large number, which substantiate the allegations in the information, and which compose the different parts of the certificates with reference to which, the certificates were framed, and the payments afterwards made. He and all the other clerks in effect prove the same: they say they made no inquiries; the notes were brought to them ready written; that is the usual way in which they were brought to these men: there were no inquiries or examination before signing them, whether the work was done or not: he is required, the first time such a note was brought to him, what he was to do with it—he told he was to enter it in the workmanship book, to sign it, and to return it to the cooper; and being so told, he says, I never inquired or knew whether the work was done. Havinden is the workman who did most of the business; I have seen one of the Mr. Hedges, but not upon this occasion. The clerks to the storekeepers are Smith, Musgrove, Eden, Pidcock, William Smith, Bradnock; I remember nobody but Havinden by name; there were other workmen there for the Hedgeses besides Havinden, but I do not recollect any body else bringing notes

when I saw one of the Mr. Hedgeses in the yard, I concluded he was superintending the business.

Each of these clerks has been in his turn produced to prove the particular notes signed by him, all of which notes were brought on the part of Hedges, as if the work had been done; and all these clerks, or the clerk of the cheque, whose particular business it should seem to have been to investigate the facts which were the foundation of the charge, abandoning their duty and trust towards the public, have reposed in careless confidence and security upon the mere accounts and documents which the parties interested have thought fit to make out for themselves—a most scandalous neglect and breach of public duty indeed on the part of all these officers—so gross and perfectly criminal, as to render them fit objects of punishment. But their criminality does not make those persons less fit objects of punishment, who, presuming upon the negligence and abandonment of the duty in these persons, and knowing there could not be any investigation made, and check applied, in respect to their accounts, which there ought to have been for the prevention of fraud, have erected upon that basis (in case you should be of opinion they have so done) the means of committing, with effect, a fraud by which the public should be deprived of money to an amount really incredible on such a subject, but to which amount, it appears by the evidence, subject to your judgment thereupon, that the public has been deprived. The neglect of one by no means purges or excuses the fraud of the other. This negligence is gross, and highly deserving not only of ordinary censure, but of punishment of the severest kind, and which it loudly calls for, against persons who have in a manner, lent themselves to the commission of these crimes by others, by the encouragement and facilities which they have afforded them in the abandonment of their own immediate trusts and duties in the particular situations of check, inquiry, and control, in which they were officially placed.

The evidence of Musgrove, of Eden, of Piddock, of Smith, and of Bradnock, it is unnecessary, as it appears to me, to trouble you with in detail, as their evidence is in effect the same: that is to say, that, giving credit to the fact contained in these notes, not looking at them, they merely entered them in the workmanship-book when brought to them, and when entered in the workmanship-book, the entry became thenceforth a voucher for a charge to that extent. The Hedgeses again brought forward the notes which had been delivered back to them, along with the rough draught of a certificate; that is, all the items contained in the several notes, were digested into the form of a certificate, and that certificate was afterwards arranged by the officers, and then the officers gave it, by the required signatures, the necessary effect

and currency at the pay-office: this is, in substance, the whole of the evidence of all these persons.

Then, gentlemen, the payment is satisfactorily proved of four of these certificates: one is for 548*l.* 8*s.* 7*d.*; another for 706*l.* 12*s.* 7*d.*; another for 904*l.* 9*s.* 4*d.*; and the other for the sum of 1083*l.* 7*s.* 4*d.* They were paid, you see, by navy bills, which had the interest of three months added to them, thus exceeding the actual amount of the money charged in these bills, by having interest added to them for the time they had to run. It then appears that these were brought in, one by John and the rest by Michael Hedges, and that there is an indorsement either upon the back or the margin of the instrument, by which it appears that they have received payment upon each of those instruments. They run in this way: Michael and John Hedges, coopers wares, 555*l.* 12*s.* 6*d.* the principal sum being 548*l.* 8*s.* 7*d.* the difference being made by the interest being added, which amounted to 7*l.* 3*s.* 11*d.* that was delivered to the person signing it, who in that case was Michael Hedges. The next for 715*l.* 18*s.* made up of the principal sum of 706*l.* 12*s.* 7*d.*, and 9*l.* 5*s.* 5*d.* the interest. The receipt, there again, is given by Michael Hedges: that runs in the bill, "Michael and John Hedges for coopers wares." The next is for 916*l.* 6*s.* 9*d.*, being composed of the principal sum 904*l.* 9*s.* 4*d.*, and the interest 11*l.* 17*s.* 5*d.*, the receipt is given by John Hedges. The last is 1,097*l.* 11*s.* 8*d.*, principal sum 1,083*l.* 7*s.* 4*d.*; the rest is made up with the interest, being 14*l.* 4*s.* 4*d.*

Gentlemen, this evidence establishes that, by means of notes originally framed by the Hedges, or persons employed by them, sums of money to the amount stated in these certificates, with interest upon them, have been received by the defendants; that they came to their use; and Thomas Davis, who is a messenger at Woolwich-yard, proves that he carried them to their house. He says, he had been employed there between six and seven years, and had been employed to take certificates to persons to whom they belonged; he had generally seen one of the Hedges, the eldest; he delivered them sometimes to one, sometimes to the other; to the youngest once or twice. The four certificates are then shown to him; he swears he took such as those. Indeed, there is no doubt upon that question, for it is proved that the defendants received the money upon them, which would, of itself, have been sufficient.

The counsel for the prosecution next proceeded to impeach these certificates—to impeach these vouchers upon which the defendants procured the money, and to show that the charges were made for work not done, and for materials not supplied. The observations which have been made by the counsel for the defendants, upon the credit of the witnesses, Roberts, Gardiner, and Havinden

certainly are fit for your consideration; but you will recollect that these men are confirmed, essentially, by the persons who swear that no such work either was or could be done; and that the difference between what was done, and what is charged for, is so enormous in point of value, that it exceeds all possibility of the charge having been made under any thing like mistake, the number being in the disproportion of three hundred to twenty-nine hundred: therefore, the witnesses I have last mentioned, though they certainly come before you under circumstances of very considerable discredit, by having been themselves guilty participators in the fraud they impute to their masters, having calculated and received their own wages upon the rate of that very charge which is imputed as fraud to their masters; contaminated as they are, still, if they are confirmed essentially, as they seem to be, as to the fact which they declare, by documents under the hand-writing of the defendants, delivered in by themselves—by the fact of the certificate being delivered in according to those documents—by its being clear that there were no persons to check or control those items, but that they were taken upon their statement; all that lends considerable credit to their account.

It is established beyond a possibility of question, that government never was supplied with any adequate proportion of these articles of charge, either in respect of labour or of materials, and if that be the case, then these persons who come before you under circumstances of infirm and doubtful credit, stand corroborated and confirmed; so much indeed, that there is hardly any thing, except the fact of immediate direction, which stands upon their own single, unsupported testimony, and you will consider how far there is, upon the whole any thing material which at least stands upon their single unconfirmed testimony.

William Roberts says: "I served my apprenticeship with Young, Adams, and Corsten; the younger Hedges was apprentice at the same time with me. When they took up business afterwards, I acted under them. I attended the dock yard on their account. I carried the notes from time to time, to the storekeeper's clerks, containing an account of the work done; and, when I had procured their signature, I carried it to Mr. Hedges. I received a copy how I was to make out the account for the work done; that copy I have lost. I was to get the work put into the workmanship book; I was never to charge for less than an hundred barrels."

There was an observation made by the learned counsel for the defendants, as to the probability that any man should be so unguarded as to give out to another a paper, under his hand, which would be the means of his own detection. Why, if he had written down, I advise you, or direct you to make out from time to time, accounts in this way, that

an hundred and twenty hoops should be set down, whether you deliver that or a less quantity; it would be in the highest degree improbable that a paper of that description, and couched in such express terms should be given out to him: but that as it appears to me from the evidence of the witness, the sort of paper he delivered to him. It is for you to understand it, according to the natural import, which seems to be, that he had delivered to him a kind of form in one way to frame his account, in which the real and the nominal quantities were set down in contrast with each other as, for instance, the real quantity ten, the nominal quantity, or quantity charged, to be an hundred and twenty, or any such number: that you or I, looking at the paper, should infer upon the face of it, infer that the direction to him was an improper direction, for the purpose of guiding him in the manner in which he was to make out his account; but that it was to serve as a general model or pattern for charges to be made in that extent: I was ordered to get the work put into the workmanship book; I was ordered not to give in less than an hundred barrels at a time, though I should do better, and, indeed, if any such direction was given, it seems to have been observed and acted upon; for I do not find any less quantity than an hundred barrels charged at one time; "seldom less than fifty were charged at a time; I had directions, with regard to masts, to charge an hundred and two hoops for each set of masts, and lower. Now, gentlemen, supposing these directions to be given, how enormous the quantity requires, we are told, for a first, rate ship more than fifty hoops, and nothing near so many for a frigate. The average number of masts between a first, second, third, and first rate, and frigate, would be much less than forty; he was directed, however, to charge an hundred and twenty for each ship; and all the accounts which have been laid before us (I observed them, as well as I could, as I went on) I did not find less charged than an hundred and twenty to any ship. "I was directed to charge all alike; an hundred and twenty whatever the rate of the ship. He put this in writing; this is the same as the original, which I lost; they also gave verbal directions to the same effect."

It is said, by the learned counsel, that the directions, though given to Roberts, do not appear to have been communicated on, so that therefore they go no farther, in point of evidence, than showing the proposed manner of dealing of these persons, and shewing what manner they meant their accounts to be made up; and if what passed with Roberts does not connect itself with the particular accounts afterwards made out, they are not evidence of the fact of what was done at the time, but only of the motive and intention of the party, so as to give a colour and con-

plexion to his conduct at a subsequent time, upon a similar occasion, and under similar circumstances; but these directions do not apply immediately to the vouchers in question.

He says, "this is the same as the original, which is lost, they also gave me verbal directions to the same effect; I missed the original about six months ago; I perfectly remember what was written on the paper. As to the hoops for barrels, I was never to charge less than an hundred, whatever number I used; I used two extra iron and two wooden hoops on each barrel. I acted upon those orders, and did accordingly. John Hedges gave me directions; I did not converse with Michael upon it;" therefore it will be for you to consider how far Michael Hedges is brought into, and implicated with, the knowledge of this circumstance by his subsequent conduct; and which is in a considerable degree affected, I think, by the circumstance of his paying the enormous wages stated by Havinden to be paid to him, and which far exceed the limits of any honest labour which could be charged to a person acquainted with the subject, as having been in fact performed. And if no such charge could be reasonably and honestly allowed it becomes a question for your consideration whether it was not allowed in order to warrant the employer to charge, upon the supposed footing of that labour having been employed a proportionable sum for his own benefit in his account with government. "Gardiner went with me down to the dock-yard to work, to the best of my recollection, more than four years ago: he was not with me after March, 1800. I did not receive any instructions to communicate to him how he was to proceed; he went to assist me in doing the work; he saw me make out my accounts, and he made out his the same"—that is, Gardiner, who succeeded him, he says, he saw him make out his accounts, he does, therefore, connect himself with Gardiner, for he says, Gardiner did see him make out his accounts; and made out his the same. "I went to Woolwich yard when I had served about three years of my time; I went to work for Hedges; they had the contract then; I cannot recollect the date exactly; I worked there two years and a half, off and on; I conducted the business for them, and took notes to the storekeeper's office for them. Only John Hedges and I were present when he gave me the directions; I saw the paper, on which was given a kind of precedent for me to make my charges, six months ago."

John Gardiner is next called; he says, "I served my apprenticeship to Young, Adams, and Corsen; I lived with Hedges after they took the business; I went to do the work in Woolwich yard. When I had served three years of my time, I went with Roberts, and continued better than a twelvemonth in the employment of the yard; the work was coo-pering pitch and tar barrels, and putting

hoops upon masts. I had the liberty of charging what I liked, and nobody to control me. I made out the account and took it into the storekeeper's office, in the dock yard. I was paid for my labour by the Messrs. Hedges. My account was carried to the storekeeper, and entered in the work-manship-book, and the paper on which the entry was made was signed by the clerk, and carried back to Hedges. I delivered the notes to John Hedges. I charged more a considerable deal than what I had done; but I cannot say in what proportion; if fifty hoops were employed, I charged an hundred barrels. If I employed ever so few, I always charged an hundred barrels. I used to go once a week with my notes. The hoops which I wanted were sent down by Messrs. Hedges by a waterman. I was paid for my work, as I charged it for workmanship as if I had used them; and sometimes I had not the quantity to use; for frequently I stood still for want of materials. I mentioned it to John Hedges, generally, but sometimes to Michael; but I kept on charging, and they must know it. I brought back notes as if I had been at full work, equally the same, and they paid me accordingly."

Now if this be true, that at the time they knew he had not materials to go on with the work—not the hoops to apply either to the masts or the barrels, and yet he was bringing back notes to them, (and notes certainly do appear during the time of this employment to have been brought back), it is impossible that any persons viewing those notes, and having the common knowledge of the state of their own materials employed in a way of business which every man conversant with business must be supposed to have, could fail to know that such notes were given for quantities of materials which never were sent into the yard. If a man receives a bill brought by his servant, as for materials used, when he knows that instead of those materials having been issued, the work had been at a stand during the period in question, he could not fail of knowing, from the face of the document, and a recollection of the application that had been made to him for materials, that he was receiving a voucher to entitle him to money which was not due, because the materials had not been furnished, and of course, the work could not have been employed upon such materials.

He says, "I was paid for workmanship, as if I had used them, and sometimes I had not the quantity to use; for frequently I stood still for want of materials. I mentioned it to John Hedges, generally, but sometimes to Michael; but I kept on charging, and they must know it. I brought back notes as if I had been at full work, equally the same, and they paid me accordingly. This happened in respect to both of them occasionally; when they saw the charges they must know but they were not the actual quantities. I

have been told by John Hedges, that the contract would not be worth having, but for the overcharge. There are no prices, but only quantities put down in the notes; and in the workmanship book John Hedges took out my money, and calculated what would be due to me for wages, from the quantities in the notes, and Michael Hedges paid me. He paid what John Hedges had booked for me. What John Hedges had calculated, and put down as my work, that Michael paid me. They said sometimes they were going to weigh off hoops; that is, to get them from the wholesale dealers. I stood still sometimes three or four days, for want of hoops, and yet I went on charging as if I was at full work; they never assigned any reason to me for keeping my pay full up. When I was employed in hooping masts, I charged an hundred and twenty hoops for a set of masts of all sizes; they generally run large masts. I charged the same for a seventy four gun ship and a frigate; a set of masts required about forty; I charged masts only when I had some to do. When a boy, I have assisted John Hedges; he must know that an hundred and twenty were more than could be fairly charged: he never objected that I charged too many. All the notes from April, 1800, to August, 1801, are of my writing." He is shewn a great number of them: "this is of the 2nd of October, 1800, is all of it John Hedges writing and that runs in these terms: 896 tar barrels, trimmed and set to rights—5,376 large wood hoops, on tar casks." He says, "that was written by John Hedges, for labour supposed to be employed. I had done but a very small part of that which is charged. He knew I had not done it all; they had not furnished me with near enough materials to have done the work in this note, which is charged in his hand-writing."

"There is another note of the 4th of July, 1800, where 1,600 hoops on press barrels are charged: these were nearly all set on. There are 150 new heads charged, when there were none at all. There are 150 press barrels charged, to be cross barred and headed: those were all done; but as to new heads, I never had any new heads, none were ever required, but the old heads were put in again."

Now this is a fact capable of contradiction, whoever had this document under his hand. The man who was to pass it, or Michael Hedges who was to calculate the pay upon them, could not read it, without seeing that new heads were there charged; and he must be conscious that no new heads had ever been issued from their yard, from beginning to end, in the whole of their work at this yard. If that was not true, where are the other workmen who had the delivering out of the materials from their yard? Might not the defendants have called their workmen to say, those quantities were sent, and this man, who denies it, is stating a palpable untruth? for there were, at least, an hundred and fifty new

heads sent—but that fact, as stated by a witness, is not broken in upon by any contrary testimony; and, therefore, it is not an original credit might be due to them from the situation in which they stood, weighing this fact; but if they state that which is capable of contradiction, and it is not contradicted; and if they state that which concurs with what we have in evidence, under the hands of the parties themselves, they state a very different degree of credit that we would if they were not so vouched. "I was by Hedges's direction I knew how to charge them at first. I had a note similar to the one made out by Hedges, that I might know how to charge." That is what is meant by my directions. "I was to charge press barrels according to the pattern which he gave me. I was ordered to charge new heads to the same though I never employed one: this was by directions from John. The defendants' books: they employed ten or twelve men at home, and their books would show the issue from their yard of any corresponding quantity of materials, it would be the easiest proof in the world; and the documents which their men had delivered would verify a corresponding issue, and be vouched by their own men, from their books, at the time. As to this article of a hundred and fifty new heads, suppose there had been a few short, you would not have them to the precise number. They had no means of proof in their own hands of the fact, if any such supply had existed. I charged 180 hoops for each set of masts. Mr. Hedges's direction, though I did not do one half; and Hedges must have known it was a fraud of at least one half. I succeeded Roberts; Havinden was called in, and directed to succeed me in less than ten days after." It does not appear that he was dismissed in ill-humour, or any thing of the kind. Whether he went into any other branch of service for these persons, or wholly separated himself from their service, and on what account, does not appear; but Havinden succeeded him.

Another note of John Hedges is dated the 7th of March, 1801—2,896 tar barrels, bunged, filled, watered, &c.—5,584 large hoops, on tar barrels. He says part of the hoops were an overcharge, at least one to the hoops were an overcharge. Now that amounts to an overcharge of about 2,740 barrels in that single article. The charge of barrels, he believes, is right, and this was the work done, and materials used by him; therefore he can speak with certainty and ledge, that above half are an overcharge of these hoops.

Being cross-examined, he says, "I was paid according to the labour which it appeared from these notes I had performed; and Michael Hedges entered what I was to receive, and Michael Hedges paid me upon the fact."

in Hedges's entry. If I went to ask for materials, they would say, they would send me down, perhaps, to-morrow; and they might or might not do so. I only asked by word of mouth. I most frequently used to either John Hedges or Michael Hedges when I wanted any thing. Sometimes I have been myself with the things in a boat; I never went and helped myself. When I have been standing still for three or four days, I tried a note home, and I received my wages; Michael Hedges must know I was standing still for want of hoops at the time I was paid."

Thomas Soley, third clerk to the clerk of the Exchequer, says, "these vouchers were delivered to me either by John Hedges or Henry Havinden; I should not make out a certificate without them." That was to explain a circumstance which might appear odd: that these notes, which had been sent back from the office after they had entered them in the workmanship book, should get again into the hands of government. It appears by this man's depositions, that when they came for the certificate they brought back the original notes with the signatures upon them, and the officers not only referred to the workmanship book, but looked at the original notes of livery, which were signed by their own clerk; those are materials to which they looked in order to form the certificate.

Henry Havinden is then called; he says, "I was bound apprentice to Young, Adams, and Corsen; I entered into the service of the defendants some time in the latter end of the year 1800; I was bound apprentice the same year with John Hedges; I continued in their service till June or July, 1802; I succeeded the ordinary, in January 1801, in his employment at the dock-yard. One Monday John Hedges came out and called me into the counting-house, and asked me if I had any objection to take my old place again in the yard? I had been in that place when I was an apprentice; I had work to do in Deptford yard, would I do it? He said nothing about notes then; I went to work in Woolwich yard soon after; I made out notes; and, when I told Mr. John Hedges what I had been doing, he showed me one of Gardiner's notes, and told me I must make them out in the same manner as he did." It is not that he was to make one out as was stated by the counsel, but, "he told me to make them out in the same manner as it was made out. I always charged more on the work I had actually performed; when I wanted a good week's work, I put down accordingly." So that according to this man, they connived at his enormous charge of wages, which was for more work than one man could do, or than there was any idea he could have done. "I never took any account of the number of hoops; I charged them just according as it came into my own head." He argued at his own will and pleasure, but when it should be recollected that the de-

fendants charged in a similar proportion; and as they could have their charge upon the public made effectual through the medium of this man's charge, who benefitted himself at the same time, they connived at the extravagance of that charge so made upon them, because it was the necessary means of their receiving to a much larger amount themselves. He says, "I charged just according as it came into my own head." This does show, if it be true, in what a terrible situation the public accounts are, when a man is suffered to charge at his own pleasure, having a profit depending upon such charge in the amount of his own wages; the master permitting that servant so to charge because his own demand upon government grew out of that charge, in a corresponding proportion. Unless there are some means provided or enforced for repressing frauds of this sort, it is in vain that the country has a large revenue, derived from its various sources of taxation, applicable to the public service; the whole of it may be absorbed and swallowed up in vain; and farther taxes again and again may become necessary to replace what they have been thus unjustly defalcated; that is supposing the facts to be as stated by the witnesses, and the inference of fraud to be justly deducible therefrom.

He says, "I used sometimes to charge for hoops when I had none at all, and they must know I had none, but I always had hoops when I asked for them; I always charged more hoops for the press barrels than I actually used; I wrote the notes myself, and used to carry them home to my masters; the calculation for my wages was made upon the charge contained in the notes; I was always paid according to the number of barrels, so much for tar barrels, so much for press barrels, and so on; they always gave me hoops when I applied; Michael Hedges generally paid me; he was resident on the premises, and therefore must know whether hoops were sent or not;" as, indeed, any person who was resident upon the premises and superintended the issue of materials for the trade, could hardly be ignorant whether the articles charged in this account as having been issued by him, were, in fact, issued or not. "My master made out a rough draught of an account of the notes I had brought in: Michael Hedges paid me my wages; he had paid me eight, nine, and sometimes ten pounds a week—over ten pounds once or twice; a labouring cooper could not have earned half the money by right-down labour; I reckon my week's work at the block at three pounds, and the defendants must know what I could earn, for I served my time to them." If, therefore, this man having worked with these defendants as an apprentice, brings in a charge of nine or ten pounds a week for his labour; could they be ignorant that that was charged as a kind of premium to him for making that false charge by which they were

to benefit—that is, at once a premium for a false charge, and hush money to induce him to conceal the fraud in which he had been engaged in common with them? It appears afterwards, that when he did occasionally employ any persons to assist him, he did not bring that into his charge; but then they must know that this rate of charging was, in several instances at least, going on, when neither his own labour nor the assistance of others was necessary; for they could not be labouring when there was a want of materials for their labour to operate upon, and when it was, of course, impossible to suppose that he was paying others out of those wages.

Then there is an abstract in John Hedges's hand-writing to December 1800, another abstract from September 18, to March 1801, in John's hand-writing also, given in evidence, but which, whether from any imperfection in the proof they expected on those heads, or from some other cause, the counsel for the prosecution did not afterwards so apply as to make them a material subject of observation to you. Havinden is shown a note, dated the 7th of March, 1801, signed W. Constable; he says, this was written by John Hedges; "he came to me," he says, "at Woolwich, and bid me take it in, and get it signed," that related to Gardiner's time; there is another, the signature to which is Fensham's hand-writing; "all the rest," he says, "is mine."

He is shown a note of the 5th of December, 1801, in which large quantities are charged; he says, no such quantities were used as are there stated; he once had a conversation with the defendants—both were present—one said, he hoped there would be no dust about it; this was just before the discovery of the overcharge; there had been a delay then about making out the bill, and they talked about the delay that occurred in making out the bill, by which I understood they meant the certificate entitling them to be paid; having entered into the service of the defendants in 1800, he continued till June, 1802, when this disturbance took place. He says, "I worked in the dock-yards at Deptford, Woolwich, and Chatham; I went once to Sheerness, but I did not do any thing there; John Hedges asked me, if I had any objection to take my old place again; where there was more work than I could do, I hired men, and paid them myself, but I have been paid eight or nine pounds a week for work done by myself when no man were employed under me, and I have worked by myself."

Thomas Munns says, "I went to work with Hedges at the latter end of the year 1801; I was sent to Woolwich yard in about a week or a fortnight; Henry Havinden paid me; I was there six weeks or two months, sometimes at Deptford; I was there long enough to know what business was going on; I never saw any hoops fixed on masts during the time; I never was employed in

"new heading; no new heads were put; so that this person, who was employed at the place, on whom no imputation can speak to the fact that new heads were not put on, whereas new heads appear to have been a constant current article of charge. There is a charge of 10,397 Stockholm hoops, and 12,331 tar barrels trimmed during that time; trimming is a constant article of charge, which this witness says was done, or he must have known it; "there were some of the press barrels, better than a hundred; there were extra iron hoops on about two thousand tar barrels and a thousand pitch barrels; the hoops were sent from Messrs. Hedges; and the hoops sent from them were employed."

Then, gentlemen, another class of evidence is called to prove that these charges were possible to be truly made; they state, actual, if I may so call it, consumption of the yard—the actual quantity of hoops that have been employed—the actual quantity of barrels and other things coopered during the period—and they prove, incontrovertibly, by these documents stated the employment of materials that never had been employed, a work that had never been done.

Stephen Tadd, the master mast-maker, says—that the use of wood hoops at Woolwich-yard was discontinued on the 1st of April, 1800, by order of the navy board; no wooden hoops have been used for masts since that time; he remembers them in use; he remembers the ship *Meditation*, *Abundance*, the *La Prevoyante*, the *West*, the *Serapis*, the *Empress Mary*, the *Ant*, and *Plantagenet*; he says, there was no hoop put on any one of them; these were ships for which hoops are charged in the course of these accounts that are before you; the *La Prevoyante* was masted at Deptford, and came into Woolwich to receive her share; the others were fitted out at Woolwich; had no wooden hoops; from the 1st of March, 1800, to December, 1801, there were not more than two hundred wooden hoops that would be wanted for masts; the *Isadora*, the *Princess Charlotte*, the *Alliance*, *Amarante*, and the *Perseus* were fitted; there were but eighteen on the *Amarante* and thirty-six on the *Perseus*, whereas the charge admitted on the *Amarante* is a hundred and eighty—just ten times the amount! and the *Perseus* instead of thirty-six, one hundred and sixty! It is not possible to find room on the masts to put on that number of hoops; the *Perseus* is only a third gun ship, and they could never have put on there was not wooding sufficient for the wooding, as I understand, is a rope that goes round the mast; how he meant to explain this I did not perfectly understand, but from a man conversant with the subject, and from there would not be room enough for the hoops to be put on: 2,230 hoops are stated to be charged within the scope of the account.

tion--that is not contradicted by the counsel on the part of the defendants--then, as applied to this number of 2,230, which appear to be charged in these documents, between the 11th of March, 1800, and December, 1801, the total quantity used, this witness says, is two hundred and thirty, and could not be more; and he says no cooper could think that any such quantities could have been used.

Now, gentlemen, is it possible that the persons who are the masters of these men, seeing these documents as they did, must not know that these notes contained false quantities? Could it be a mistake, when they must have known that the total quantity they issued was 230, and that they were receiving pay upon a charge of 2,300? Are people so entirely negligent of their affairs? Can men be so little acquainted with their business, having, as we have been told they have, twelve men at work, and books kept regularly, as to be ignorant that they were receiving ten times the amount, in number and value, of that which they had ever issued from their stores? for at that rate they received, according to the evidence of persons totally uncontaminated in the business.

Joseph Baker, belonging to the rope-yard at Woolwich, says:—"Press barrels are employed in assisting the laying the rope; Messrs. Hedges did some barrels for us between the 11th of March, 1801, and the 11th of December, 1801; the greatest number of hoops employed, during that time, I cannot say; but not three hundred barrels were coopered in three years for presses; twelve additional hoops are put on each barrel: two thousand nine hundred hoops could not be used in that period," and yet twenty-nine thousand one hundred and thirty-eight is the whole quantity charged during that period; "there was no new heading; I know there were not 21,117 new heads put in; there could not have been any such thing; I will not put my belief to such a fact; I know there was no such thing; I am sure there could not possibly have been 21,117 new heads put in during that time."

This is the whole of the evidence on the part of the prosecution: it therefore does not, you see, gentlemen, stand upon the evidence merely of servants, who may be supposed to have had corrupt ends of their own to answer, by having wages allowed them in proportion to the overcharge in their accounts, without such overcharge being, at the same time, brought under the immediate observation and knowledge of their masters; but here are vouchers, from time to time, brought back to their masters, upon which the overcharges are made, and the quantities are so enormous, in point of amount, that it should seem impossible, even allowing all that can, upon any supposition whatever, be allowed for negligence and inattention, to conceive it could have escaped the knowledge of the defend-

ants, that these charges were falsely made; but if you believe the witnesses, independent of the circumstance of there being an actual communication upon the subject, and that Havinden was ordered to charge as Gardiner did before, and Gardiner as Roberts, who preceded him, that a form was delivered out whereby to charge, and that John Hedges should say, they could not live by the contract if they did not overcharge; and that Michael Hedges, in settling the weekly wages, was allowing a man more every week by three times the amount than he could earn by his utmost labour in the business, and which Michael Hedges was acquainted with, having been an apprentice with him in a dock-yard, and knowing what he could earn; under those circumstances, it is for you to say, not whether it be probable, but almost whether it be possible, that they could be ignorant that these vouchers were fabricated and fraudulent vouchers, for the purpose of defrauding government.

On the part of the defendants they have called several witnesses to character, and I did state to you, in the outset of my address to you, that this is a species of evidence to which every one readily pays attention if the thing itself, the matter in charge, be of a very questionable nature, and brought before us under extremely doubtful circumstances. But if that case has been made clear to our conviction, and doubt has been fairly subdued by proof, this evidence cannot avail. The proper use of this evidence is, to assist the probabilities in favour of innocence, where any such probabilities exist, and to incline the balance in favour of a defendant, where the evidence of guilt does not decidedly preponderate against him; but if the evidence clearly and decidedly so preponderates, his antecedent good character will not avail him. Indeed every man almost, not originally, habitually, and notoriously wicked, had a good character once, down to that period when it was first forfeited by his lapse from virtue.

Jesse Curling says, he has known the defendants from little boys; he always understood them to be men of character; he has dealt with them, they have had many orders from him; he would not have dealt with them, after the first time, if he had not thought them so; certainly they have not defrauded him.

Mr. Grice, an anchor-smith, says, he has known Hedges's family forty-four or forty-five years; he had dealings with the young men; their premises are adjoining to his; he has observed their industry and sobriety, he considered them as young men of merit, honesty, and sobriety; he does not think them capable of doing a dishonest thing.

George Clay, a timber-merchant, has known these young men from children, he looked upon them as young men who carried on business with credit to themselves and satisfaction to their employers; he always considered them as honest and industrious young men.

William Easten has known them from children, has known them very well, always thought them men of honesty and integrity; from his own knowledge of them he should not suppose they were capable of committing a fraud upon their employers.

Jacob Hancock has known them a great many years, always supposed them to be two very honest industrious young men; he thought they carried on their business in a very regular way.

John Lepard has known them, but not for fourteen years last past, having removed out of the neighbourhood.

Thomas Woodrooffe has known them, one five years, the other seven; he says, they have an exceeding good character; he never heard any imputation upon either of them.

Mr. Brandon has known the family twelve years; their general character is that of very honest industrious men.

Francis Woodrooffe has known the young men seven, eight, or ten years; he always understood their character to be very fair.

William Surflen has known them ten or twelve years; he has not heard any thing against them; he believes them upright honest tradesmen.

Mr. Russell, a timber-merchant, has known them several years; he never knew them but in the way of their trade; he has always understood them to be respectable young men.

George Jones has known them from ten to twelve years; he has examined their bills; it comes only to this, that he has dealt with them and has not found them guilty of any frauds.

Thomas Hayman, a West India merchant, knows the defendants very well, has dealt with them ten or twelve years to the amount of £,000/., and was always satisfied with them.

Mr. Alexander has known them twelve years; he has done business for them, and ever knew a good character of them.

Walter Pace has known the family forty years—the young men from the age of five or six years. He does not consider them capable of committing frauds on their employers; he employs them at times, and ever found their charges to be correct and as easy as other tradesmen's; they have acted as young men with great respectability, and their accounts are as correct as the accounts of any other tradesmen.

James Dunn has known the family forty years, knew their father and grandfather; he believes there are not better young men in the county, nor better subjects to his majesty; he believes there cannot be better young men.

William Bennett has known these young men seven or eight years, has had transactions in business with them; he believes them to be men of honesty and honour.

Mr. Lester has had dealings with them from their first going into business to the present time; he always found them strictly honest.

John Roberts has known them twenty

years; he always heard a good character of them; always understood them to be good industrious tradesmen of good moral characters.

Mr. Punnett, a timber merchant, has known the defendants fourteen years, he ever considered them as upright honourable characters.

Thomas Arnold is acquainted with their general character, believes them to be honest and industrious young men as are the parish.

Mr. Bridges has known the defendants ten years; always understood them to be most very good character.

Mr. Sanderson has known the defendants from children; they bear a very good character in their neighbourhood, he never heard any thing to the contrary; he does not believe them capable of committing a fraud upon their employers.

Mr. Henschman has known them from children; has known them ever since; he heard any thing of their character but was was upright and honest.

Mr. Adams has known them from infancy; their characters for honesty are truly pure and right.

Mr. Kitson has known them about ten years; they bear as respectable characters as any in Rotherhithe for honesty and integrity.

Gentlemen, the question for your consideration is, whether these defendants are guilty of the crime charged upon them, viz. is a conspiracy; and it is essential to the crime of conspiracy that two persons at least must combine in the fraudulent purpose which is made the subject of criminal charge, otherwise, where two are charged, neither can be guilty of this specific crime; for it is a nature and essence of the crime, that it is an act done by the counsel and combination of two persons at the least. The question, therefore is, whether, by the evidence before us, a criminal privity and consent to the act committed upon government is brought home to both of the defendants. As to Michael Hedges, it is for your consideration whether that is not made out satisfactorily against him by the circumstance of his settling the wages and residing upon the premises; whether he must not know that there were no such vouchers delivered as those for which vouchers were given. As to John, there is abundant evidence, in addition to that, if you give credit to it, namely, that he gave actual vouchers for the fabrication of false vouchers, gave a precedent how the charge was to be made, and all along assisted in receiving the money upon them, directing and advising the instance of these three persons, separately, how it should be done.

In addition to this, that the fraud has actually been committed upon government, carried beyond all possibility of question, the evidence of persons from the dock, who prove that no such materials as

charged have been used, in a proportion, in some instances, of not one in ten.

Gentlemen, it is with you to consider the whole of this case, as it has been laid before you in evidence. Your judgment will not, I am sure, be improperly influenced by those motives of compassion and feeling which naturally suggest themselves in favour of those who have hitherto maintained a good character, but will be governed by the facts proved, and the just and reasonable inferences resulting from them. Your immediate duty, and the interests of the public, involved in the discharge of that duty, require that such frauds as are imputed upon this occasion, if established by proof, should not go unpunished. Weighing, therefore, the credit of the witnesses, and the probability of truth in the several circumstances submitted to your consideration, you will form, I have no doubt, upon the whole, that conclusion which is best fitted to the ends of justice.

The Jury, which was a special one, immediately pronounced both the defendants—**GUILTY.**

Court of King's Bench, February 6th, 1804.

The Attorney General prayed the judgment of the Court upon the defendants.

Lord Ellenborough read his report of the evidence on the trial.

The following affidavit, made by the defendants, was read:—

In the King's Bench.

The King against Michael Hedges and John Hedges.

Michael Hedges, and John Hedges, of Rotherhithe, in the county of Surrey, coopers, the defendants above-named, severally make oath and say—and first this deponent, Michael Hedges, for himself, saith, that he hath a wife and three children, who solely depend upon him, this deponent, for subsistence, and that the eldest of such children is not more than ten years of age. And this deponent, John Hedges, for himself, saith, that he hath a wife and three children, and that his said wife is at this time in a pregnant state, and is in daily expectation of being delivered; and farther saith, that the eldest of such children is not more than seven years of age, and that his said wife and family are entirely dependant upon him for subsistence; and farther saith, that his wife's father, an aged and infirm man, hath lived with him, this deponent, and his family for these last seven years, being destitute of every other means of support than what he derives from this deponent. And lastly, these deponents, upon their oath aforesaid, most solemnly assert, that although they have, ever since they succeeded to the business on their own account, conducted themselves and their families with every at-

tention to economy and frugality, they are worth but a few hundred pounds beyond the small capital which, they received from their guardians upon their taking to the business. And they most humbly beg leave to express their sincere contrition for their offence, and at the same time to submit themselves to the mercy of this honourable Court, humbly hoping that their sentence may be such as may exempt their numerous and unhappy families from being involved in the disgrace of an ignominious punishment.

MICHAEL HEDGES.
JOHN HEDGES.

Sworn at the Treasury Chamber, Westminster-hall, by the above-named deponents, Michael Hedges, and John Hedges, this 6th day of February, 1804.

N. GROSE.

Mr. Dallas.—My Lords, I was of counsel, on the trial of this information, for the defendants; and most undoubtedly, after the evidence which your lordship has just now reported, it would be quite impossible for me, even if it were regular, to make any of those observations your lordship heard in the last case, to draw into doubt the verdict; in truth, it is impossible, after the evidence of the witnesses, to deny the guilt of these persons. In their affidavit they acknowledge their guilt, and express, as it becomes them, the utmost contrition. At the same time, I cannot help thinking and feeling that they are to be considered, to a great degree at least, as unfortunate; it appears from the evidence, that they came into possession of this business, and into the management of this extensive contract, at a very early period of life, the youngest not being then of age. The contract had been for a considerable time in the family, and was carried on for the benefit of the mother, and of these persons while they were infants. It was also proved, that, by the regulation of the Dock-yard, it was incumbent on the clerk, in whose department it was, to report the work which was necessary before it was done, and afterwards to survey it. That it appears upon the evidence, which, unless it were sworn, it would be almost impossible to believe, that for a great number of years the officers of this Dock-yard have uniformly abandoned this part of their duty; and that in consequence of that neglect, these very young men, in the execution of their contract, were unfortunately exposed to a temptation which they had not virtue enough to resist. It is stated on the face of the information, that they fraudulently procured different officers of the Dock-yard to sign these vouchers. The case, undoubtedly, would have been very different from what it is, if they had done this in consequence of any corrupt influence, made use of for the purpose: but I dare say it has not escaped the Court, that the information acquits them of this; and it does not charge them with conspiring

with the officers of the dock-yard to make these vouchers, but with persons unknown. I think the information must be taken entirely to acquit them of any attempt to bribe the officers; and indeed one cannot suppose any thing so injurious to the persons who have the conduct of these departments of government, as that they would suffer those officers to remain if there were reason to imagine that they had been influenced by corruption.

I certainly cannot deny that this is a case of fraud (the exact extent of which does not appear) which these persons have been induced to commit from the temptation to which they were exposed. The circumstances which they have set forth in their affidavit respecting their wives and their families, I am sure your lordships will take into your humane consideration, and let them operate as far as you can. Their characters appear as good as they can possibly be; and I cannot agree in the observation of the attorney-general, in the last case. It appears to me not to be a doctrine the Court would wish to encourage, that no distinction is to be made between men of good characters and bad characters; and that if men have, in a single instance, deviated from the paths of virtue, no difference is to be made between their case and that of persons who have been engaged their whole lives in acts of fraud and injustice. I am sure your lordships will take this, with all the other circumstances, into your consideration, and pass as light a punishment as you can, consistently with the justice of the case.

Mr. Gibbs.—I am also of counsel for the defendants. I feel it impossible to add any thing to what Mr. Dallas has said; it is for the Court to say what weight is due to those circumstances of alleviation which have been stated by Mr. Dallas, and I will not consume the time of the Court in repeating them.

Mr. Attorney General.—I was not able to attend the trial; my friend, Mr. Erskine, conducted the prosecution.

Mr. Erskine.—In the necessary absence of the attorney-general I attended the trial; and, to be sure, a more disgusting scene, to any man of any sensibility, either as it regards public or private worth, never was exhibited in a court of justice. There must be some limitation, undoubtedly, to what is to be expected from the Court, on account of the character which the persons standing here have been supposed to deserve from the public; and I might in this case add to the frauds which these men have been committing, their fraud upon the public in passing for men who deserved any reputation at all; for it is like the case before the Court a few months ago, of men who had deserved well of their private friends and of the public at large; who had exposed themselves to danger in the defence of their country; who had devoted themselves for a number of years to their duty, with honour to themselves and advantage to their country; whereas Mr. Dallas

has adverted to that which is true—that these persons came into this trade the moment they were of an age to have the control over their own affairs; that they began whipping in the post in their career of fraud without having one moment of their precious time, and giving these iniquitous commands to their servants, at a time of life when it is not common for men to have arrived at the degree of infamy which must have belonged to them at the time they gave them.

It is a pleasant and a useful thing, that an affidavit they have made has been read, and I hope it will be generally known, and that it will be taken to be true, though there is a reason to suppose it to be true because they have sworn it. I hope that it will be taken to be true, for it will convince the public that honesty is the best policy; that if they had conducted themselves with honesty, and that that economy which they wish to induce your lordships to believe they have, they might have made that profit which tradesmen are expected to make; but that, notwithstanding these enormous frauds, they are just where they began; that they have derived no profit from the monstrous and iniquitous frauds they have practised.

The consideration of their circumstances and their families may, perhaps, induce your lordships as far as it goes, with regard to any fine which you may be disposed to inflict; but I apprehend your lordships will pronounce a sentence of a very different kind; that your lordships will pronounce a sentence which will expose them to that infamy which the crime demands. Your lordships are not in this court, but in your circuits, as judges, obliged to pronounce punishments ready even the lives of the offenders, for crimes committed under great and sudden temptation, under circumstances of great distress or poverty; yet, nevertheless, the law commands the sentence, and your lordships are bound to pronounce it: but in this particular instance there is no sudden temptation; the crime committed here, and for which we stand for judgment, is not that which comes upon them on a sudden before they could recollect the duties they had to perform; it is an old and systematic fraud, which extends to an amount that almost surpasses belief; it requires a severe example to be made of two persons, and it is extremely difficult to discover frauds of this kind, for Mr. Dallas says, that their offence is diminished by their not having bribed the officers. The fact is, the officers was in believing what these persons who have sworn to their characters believed, that they were honest men. The Admiralty, and the commissioners of the navy, have not removed many of these officers from the situations which they held under the idea that, though they were not sufficiently careful, they were not cognizant of the frauds which were in the course of being committed. For as to these men, it was

necessary they should be corrupted; they received, taking them to be true, the accounts which the defendants servants were in the habit of bringing; and your lordships find, that those accounts were made out in consequence of a direction from the defendants, and that the direction given by the defendants to their servants was not in one or two instances, not in a particular case, but an universal command, wherever you go to hoop one barrel never charge less than an hundred; and if you put hoops on the smallest vessel which ever comes into this dock, never charge less than an hundred and twenty, though it was impossible they could require above forty; and this, as I had occasion to remark on the trial, in a corner of the necessities of the British navy, by one contractor, in one dock-yard. And here let me observe, that if such frauds as these are extended throughout all the immense extent of the outfit of the British navy, all the gallantry of our seamen, and all the excellence of our marine, in every respect, would not save the country from ruin. I apprehend, therefore, I should be abusing your lordships time and patience, if I were to say more; it depends more on your jurisdiction than your discretion. Your lordships will see up to what extent, in a case of misdemeanor, you can pronounce a severe and an exemplary punishment.

The defendants were committed, and ordered to be brought up again on Saturday the 11th of February.

Court of King's Bench. February 11, 1804.

The defendants being brought up to receive the judgment of the Court, the defendant, John Hedges, presented the following petition which was read:—

"To the right honourable lord Ellenborough, sir Nash Grose, sir Soulden Lawrence, and sir Simon le Blanc.

"The humble petition of John Hedges, of Rotherhithe, cooper, respectfully sheweth,

"That your petitioner, deeply lamenting the unfortunate situation his breach of the laws of his country has placed him in, and fully sensible of the heinousness of the offence against his king, and against society, that he has been guilty of, most humbly and submissively bends to the justice of the verdict, and the consequent punishment that awaits a crime of such magnitude as that of which he stands convicted.

"Your petitioner, throwing himself on your lordships' equity and humanity, humbly presumes to state, in justice to his unfortunate brother, implicated in a crime committed alone by your petitioner, that neither directly or indirectly was his brother privy to, or concerned in, the fraud and imposition on his majesty's government, inasmuch as that branch of the business of your petitioner's house was exclusively confined to your petitioner.

"Your petitioner humbly submitting to your lordships, that a comparatively innocent man, and his helpless family, may not become the victims of a connexion without a participation in the crimes of your petitioner, therefore most humbly prays that the whole weight of the punishment, however severe it may be, which your lordships in your wisdom shall deem it necessary to inflict, may solely and exclusively attach on your petitioner.

"And your petitioner, as in duty bound, will ever pray.

JOHN HEDGES."

Mr. Justice Grose;—Michael Hedges and John Hedges: upon the charges in the information filed against you by his majesty's attorney-general, you have been tried and convicted, and that conviction has disclosed one of the most complete systems of fraud that can be invented by a servant, to involve in ruin his employers. Those who heard the report, and reflected on the consequences of these transactions, must shudder at the prospect of that ruin which, however abundant our commerce and resources may be, must attend reiterated frauds, in which so many seem to have been concerned, and I lament to say, hitherto with impunity. From the open and undisguised manner in which it was practised, you seem to have bidden defiance to detection, relying on the frequency of the like crimes in others, as a prevention of every one in the Dock-yard who must be privy to these frauds disclosing the parts you took in them, lest they should be accused of similar practices. To such a degree of enormity have they prevailed, that the only ground we heard of in mitigation of your offence was, that having observed other officers in this Dock-yard to have abandoned the execution of their duty, you were exposed to a temptation that your virtue could not resist. That ground of mitigation, in a court of criminal jurisdiction, is not to be tolerated for a moment; it would lead to encouragement of every crime, and, in the end, to anarchy and the breach of every law, and tending to justify rapine, robbery, and murder, by the commission of rapine, robbery, and murder by others. Experience and common sense dictate, that the more inveterate a disease is become, the more powerful the remedy should be to eradicate it. We were not surprised that we heard such observations from the counsel, for they are justified by the report; and it may be hoped, that if others in these dock-yards, whose duty it is to watch over the interests of that public who employ and pay them for so doing, have not yet heard it, that it will not be long before they shall; and that neither the frequency of the offence, nor the rank of the offender, shall protect those who prey upon the vitals of this injured country from condign punishment. But truly it was observed at the bar, by the counsel for the crown, that all the gallantry of our officers in the field can never save a

country from ruin in which frauds like the present, so undisguised, so universal, and so ruinous, shall pass unpunished. As to the particular proofs of the offence, they were so repeated and so extensive, that scepticism itself could not have hesitated about your guilt. Your general orders to your servants were, never to charge less than a hundred barrels, however few were delivered; those orders were punctually obeyed, and we find articles charged for occasions for which they could not even be used, which must have been known to others not now before the court. One great aggravation of your offence is, that you paid your servants in proportion to their surcharge, and thereby bribed them, unable to resist the temptation to increase their illicit gains for the sake of increasing your own; a more destructive system of peculation by servants, and consequent ruin of their employers, ingenuity could not have devised. The amount of all your frauds is incalculable; and we can only conjecture what it might be, when we attend to the order above stated given to your servants, and observe the mode in which you proceeded, and charges amounting to no less a sum than 3,242*l.* 17*s.* for stores supposed to be delivered within the period specified in the report.

We have attended to the petition which you John Hedges have delivered in behalf of Michael Hedges, the wretched partner of your trade and of your delinquency; unfortunately

it has no foundation in truth, the guilt we brought home to each of you; so that no possible doubt can exist in the mind of any man on that subject. If frauds like these continue to be practised with impunity, the ruin of this country is inevitable; and it is impossible under such circumstances, that any taxes to keep pace with the rapacity of our servants to save the state from ruin your punishments must be exemplary, that men, by your example, may be taught that honesty is the best policy.

We have likewise attended to the evidence given in your behalf, ascribing to you the characters of honesty and integrity, upon which I shall only say, that I sincerely hope the punishment that we are compelled to inflict will induce you to deserve characters in the future which you have so little merited hitherto. Taking all the circumstances of your case into consideration, we do order and adjudge that you do each of you pay a fine to the king of five hundred pounds; that you be imprisoned in his majesty's gaol of Newgate, six calendar months; and that during the first month of that imprisonment, you and each of you once stand in and upon the pillory for a hour, between the hours of twelve at noon and two in the afternoon, in that part of the street called the Strand, opposite Somerset house; and that you and each of you be further imprisoned in his majesty's gaol of Newgate until such fine be paid.

A D D E N D A

TO THE CASE OF JOSEPH WALL, Esq.

AT THE COMMENCEMENT OF THE TRIAL, P. 51, THE FOLLOWING PROCEEDINGS SHOULD BE INSERTED.

Sessions House Old Bailey,

Wednesday, January 13, 1803.

The special commission * was opened, present, the right hon. sir Archibald Macdonald, knight, lord chief baron of his majesty's Court of Exchequer; sir Soulden Laurence, knight, one of the justices of his majesty's Court of King's-bench; sir Giles Rooke, knight, one of the justices of his majesty's Court of Common Pleas; sir John Eamer, knight, lord mayor of the city of London; sir John William Rose, knight, recorder of the said City, &c. &c.

The grand jury being sworn, Mr. Recorder addressed them as follows :

Gentlemen of the Grand Jury; You have been summoned by the authority of a special commission, to try in more instances than one, the crime of murder. If a person is murdered out of the land, such a killing cannot be tried at common law, but such a fact examined by the privy council, may, by an act of parliament which passed in the 33rd year of the reign of Henry 8th, be tried before commissioners appointed by the king, in any county in England; so in this instance is the present commission issued, to try one prisoner for murder committed out of England. To a very respectable London jury I feel that there is no necessity of going at large into the law, as it has been laid down respecting that very heinous offence, and therefore I shall content myself with one observation only, which is, that the law of murder is precisely the same in the present case as if it had been charged to have been committed within the ordinary jurisdiction of this realm. I trust, therefore, no difficulty will arise in your minds; if it should turn out otherwise, you will have the assistance of this Court. I have now only to request, that you will give the business before you that reasonable dispatch that the justice which is most certainly due to all parties requires.

The Grand Jury then retired, and in the afternoon returned with three true bills of indictment against the prisoner.

Friday, January 15th, 1803.

The prisoner was brought to the bar, was arraigned, and pleaded to all three indictments, Not Guilty.

The following is a copy of the Indictment.

London.—The jurors for our lord the king upon their oath present that Joseph Wall late of London esq. and certain other persons whose names are to the jurors aforesaid at present unknown not having the fear of God before their eyes but being moved and seduced by the instigation of the devil on the 10th day of July in the 22nd year of the king's reign with force and arms at Goree in Africa in parts beyond the seas without England in and upon one Benjamin Armstrong in the peace of God and our said lord the king then and there being feloniously wilfully and of their malice aforethought did make an assault and that the said persons whose names are to the said jurors unknown as aforesaid with divers to wit five hempen ropes of the value of one penny respectively (one of which said ropes each of the said persons whose names are to the said jurors unknown as aforesaid in his right hand then and there respectively had and held) him the said Benjamin Armstrong then and there feloniously wilfully and of their malice aforethought divers times did strike and beat then and there giving to him the said Benjamin Armstrong by means of the said striking and beating of him the said Benjamin Armstrong with the said ropes as aforesaid in and upon the neck back sides and loins of him the said Benjamin Armstrong divers mortal bruises and also divers mortal wounds of the length of six inches of the breadth of one inch and of the depth of one inch respectively of which said mortal bruises and wounds he the said Benjamin Armstrong from the said 10th day of July in the 22nd year of the reign aforesaid until the 15th day of the month of July in the same year at Goree aforesaid in parts beyond the seas without England did languish and languishing did live on which said 15th day of July in the 22nd year of the reign aforesaid he the said Benjamin Armstrong at Goree

* A copy of the Special Commission will be found in 4 Chitty's Criminal Law 152.

aforesaid in parts beyond the seas without England of the mortal bruises and wounds aforesaid did die. And that the said Joseph Wall at the time of the committing the felony and murder aforesaid in manner and form aforesaid was then and there feloniously wilfully and of his malice aforethought present aiding and abetting helping assisting comforting and maintaining the said persons (whose names are to the said jurors unknown as aforesaid) the felony and murder aforesaid in manner and form aforesaid to do commit and perpetrate. And so the jurors aforesaid upon their oath aforesaid do say that the said Joseph Wall and the said other persons whose names are to the said jurors unknown as aforesaid him the said Benjamin Armstrong in manner and form aforesaid feloniously wilfully and of their malice aforethought did kill and murder against the peace of our said lord the king his crown and dignity.

After the word Guilty in p. 178, l. 15, read as follows:

Proclamation was then made for silence.

Clerk of Arraignment.—Joseph Wall you stand convicted of felony and murder, what have you to say why you should not receive judgment to die according to law?

Prisoner.—I shall pray a little time to prepare myself—a few days.

SENTENCE.

Mr. Recorder.—Joseph Wall, you have after an elaborate discussion of the case, after a very patient hearing, by an intelligent jury of the country, of every circumstance, which the great ability of experienced counsel could advance in your favour, supported by observations founded in justice and humanity by a very learned judge, been found guilty of the heinous crime of murder. I lament, that it becomes my duty to acquaint you, prisoner, that the policy of the law, sanctioned by the authority of the Holy Scriptures, condemns the murderer to suffer death. I regret also, that my duty calls upon me to remind you, and through you to inform others, that the life of man is not, cannot be at the disposal of man, however great his authority, however high his station. The most honourable and distinguished prerogative which adorns the crown in this country, and which is found in

constant and daily exercise, is the privilege of rescuing from the utmost severity of the law, the lives of unfortunate condemned criminals, of sparing, and not of destroying human life. The law, and the law alone, under our happy constitution, in its due course, deprives a human being of existence.

We read in a discourse of one of our writers on criminal law, that malice and thought, in true legal meaning, is not confined to malevolence to particular individuals, but lies in the perpetration of a fact attended with such circumstances as are the ordinary customs of a wicked, depraved and malicious spirit. If without trial, the accused person has been confronted by his accusers, and then without any show or colour of authority with an instrument, unknown to the public, likely to produce the most horrid and cruel effect, or by a severity of punishment evoked by mutiny, or unprecedented example, you have in an oppressive, wicked and malignant spirit, caused the destruction of a fellow-creature, and so become most unfortunately for you, have forced the fact, you have committed murder. I lament sincerely, that the great deliberation with which this cruel death was accomplished, had not made in a due and timely impression of tenderness on your mind, which would have been equally fatal for the deceased and yourself, and spared me the painful necessity of denouncing the dreadful judgment of the law, which to an offence like your's must very shortly execute you by a public execution from all that is dear to you in this world.

I know of no crime that may not receive pardon from the Supreme Being, the acknowledged Father of all mercies; may you, therefore, prisoner, with a most contrite heart, sincerely repent and be forgiven; may you be released from your miseries in this world, to come partaker of the happiness of the next to come—with this prayer I proceed to the dreadful sentence of the law, which is,

That you, Joseph Wall, be taken to the place from whence you came, and that on Friday next you be taken to a place of execution, and there be hanged by your neck and you be dead; and that your body be afterwards dissected and anatomized, pursuant to the statute in that case made and provided, and may the Lord have mercy on your soul.

END OF VOL. XXVIII.

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